

### **3. USE REGULATIONS**

#### **3.1 Basic Requirements**

No building or structure shall be erected, altered or used and no premises shall be used for any purpose or in any manner other than as regulated by Section 3.1.2 and as permitted and set forth in Section 3.2, Schedule of Use Regulations, and in accordance with the following notation:

Y (Yes)	Use Permitted (except major projects under Section 7.4.2, which require a special permit from the Planning Board)
SP (Special Permit)	Use allowed under a special permit for an exception by the Board of Appeals as provided here-after
SPC (Complex Development)	Use allowed under a special permit under the provisions of Section 6.6 Complex Projects
N (No)	Use Prohibited
Y#	Allows for the use upon minor project site plan review with waiver of all requirements of Section 7.4.4 and 7.4.6 except as are necessary to demonstrate compliance with Section 6.9 by the Planning Board or Board of Selectmen in accordance with Section 6.9.

Uses permitted and uses allowed by the Board of Appeals shall be in conformity with all the density and dimensional regulations and any other pertinent requirements of this By-Law.

Notwithstanding the uses set forth in the Schedule of Use Regulations (Section 3.2), in all Industrial, Business and/or Commercial zoning districts, including Mixed Use-128 (a) if the Planning Board determines a use to be in the same general use category and is similar in kind to, and is similar in impact to, a use allowed by Section 3.2 as of right, that use shall be allowed and (b) if the Planning Board determines a use to be in the same general use category and is similar in kind to, and is similar in impact to a use allowed by Section 3.2 by special permit, that use may be allowed by the Planning Board by special permit.

#### **3.1.2 Prohibited Uses**

In any district no use will be permitted which will produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectionable effluent or electrical interference which may affect or impair the normal use and peaceful enjoyment of any property, structure or dwelling in the Town. Use of any premises in any district for landing or taking off of aircraft, including helicopters, is prohibited except for purposes of emergency.

### 3.2 Schedule of Use Regulations

#### 3.2.1 Uses in the Rural Residence-Conservation, Single Residence A, Single Residence B, General Residence, Apartment A-1, Apartment A-2, Apartment A-3, Institutional, Industrial and Industrial-1 Districts.

The following schedule of use regulations shall apply in the RRC, SRA, SRB, GR, A-1, 2 & 3, I, IND and IND-1 districts.

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1, 2</u> <u>&amp; 3</u>	<u>I</u>	<u>IND</u>	<u>IND-</u> <u>1</u>
<p><b><u>AGRICULTURE</u></b></p> <p>Farmers Market, not to exceed once a week, during the season from May 15 to November 30, which may take place on existing parking areas serving one of the following uses: (i) municipal/public uses, (ii) religious and educational uses protected by MGL Chapter 40A, Section 3 or (iii) in a commercially zoned district commercial uses, provided that the special permit granting authority determines that in addition to other necessary findings under Section 7.5.2 of the By-Law adequate parking and loading areas are maintained to serve such other uses during the Farmers Market.</p>	SP	SP	SP	SP	SP	SP	SP
<p>Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of two and one half (2-1/2) acres</p>	Y	Y	Y	Y	Y	Y	Y

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1, 2</u> <u>&amp; 3</u>	<u>I</u>	<u>IND</u>	<u>IND-</u> <u>1</u>
Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject property contains a minimum of two and one half (2-1/2) acres	Y	Y	Y	Y	Y	Y	Y
Sale during the Christmas season at a nursery or green-house of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises	Y	Y	Y	Y	Y	Y	Y
Sale during Christmas season by a non-profit corporation or organization of uncut or cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises and associated, related merchandise, including the outdoor display of trees, wreaths and merchandise. Outdoor display is permitted on existing parking spaces, except that adequate parking and loading must be maintained.	SP	SP	SP	SP	Y	Y	Y

<b><u>USE</u></b>	<b><u>RRC</u> <u>SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2</u> <u>&amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND-</u> <u>1</u></b>
<b><u>PUBLIC, SEMI-PUBLIC &amp; INSTITUTIONAL</u></b>							
Church or other place of worship, parish house, rectory, convent and other religious institution	Y	Y	Y	Y	Y	Y	Y
School – public, religious, sectarian or denominational	Y	Y	Y	Y	Y	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y	Y	Y	Y
Public park and play-ground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y	Y	Y
Public passenger station	Y	Y	Y	Y	Y	Y	Y
Child care facility	Y	Y	Y	Y	Y	Y	Y
Other private school, nursery, or kindergarten	SP	SP	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	SP	SP	SP	SP
Cemetery	SP	SP	SP	SP	SP	SP	SP
Private club not conducted as a business	SP	SP	SP	SP	SP	SP	SP

<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
<b><u>RESIDENCE</u></b>							
Single-family detached dwelling	Y	Y	Y	Y	Y	Y	Y
PRD (See 4.2.5)	SP	SP	N	N	N	N	N
RC (See 4.2.6)	SP	SP	N	N	N	N	N
Two-family detached dwelling	N	N	Y	Y	N	N	N
Conversion of a single-family dwelling to a two-family dwelling	N	N	Y	Y	N	N	N
Apartment or multi-family dwelling	N	N	N	Y	N	N	N

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1, 2</u> <u>&amp; 3</u>	<u>I</u>	<u>IND</u>	<u>IND-</u> <u>1</u>
<p>The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (age 60 or over); provided, (1) that such structure so used shall not be sub-divided into separate apartments, (2) that occupancies therein by non-owner occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which permits have been issued under authority of this section, (4) that no more than 20 percent of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted hereunder in any one year shall not exceed five.</p> <p><b>**Applies only to structures in existence prior to December 31, 1982, otherwise “N”.</b></p>	SP	SP	SP	SP	SP**	N	N

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1, 2</u> <u>&amp; 3</u>	<u>I</u>	<u>IND</u>	<u>IND-</u> <u>1</u>
The use of a single-family detached dwelling for a residential hospice house*	Y*	Y*	Y*	N	N	N	N
<p>*provided that the following conditions in addition to those set forth at section 1.3 shall apply: (1) up to, but not more than two persons for each bedroom in a residential hospice house, may receive hospice care within the house, up to a maximum of sixteen persons in the RRC and SRA Districts and six persons in the SRB and GR districts, respectively; (2) there shall be not less than one parking space for each staff person living on the premises, plus one parking space for each two persons receiving hospice care on the premises; no parking space shall be in any setback area required by this by-law; (3) any dwelling used as a residential hospice house shall comply with the following requirements: (a) minimum lot area: 87,120 square feet in the RRC and SRA Districts and 20,000 square feet in the SRB and GR Districts, respectively, calculated in accordance with s.4.2.1 (a) of this By-Law; (b) minimum frontage 150 feet in the SRA and RRC Districts and 80 feet in the SRB and GR Districts, respectively; (c) front setback: 50 feet in the SRA and RRC Districts and 20 feet in the SRB and GR Districts, respectively; (d) side setback: 25 feet in the SRA and RRC Districts and 20 feet in the SRB and GR Districts and 20 feet in the SRB and GR Districts, respectively, except that in the SRB and GR districts buildings and structures on lots created by deed or plan endorsed or recorded before January 9, 1986, shall have a minimum side line setback of 10 feet; (e) rear setback: 25 feet in the SRA and RRC Districts and 10 feet in the SRB and GR Districts, respectively; (f) maximum stories: 2-1/2, and maximum height: 35 feet, except that single-family dwellings existing before the passage of this By-Law and containing more than 2-1/2 stories or being more than 35 feet in height, may be used as a residential hospice house not subject to these restrictions on height and number of stories, provided that no additions or alterations may be made that would increase the existing height or number of stories; (4) visual buffering in the form of a natural vegetative buffer between the residential hospice house and associated parking areas, and any abutting structure, shall be maintained if such vegetative buffer exists, or created using vegetation consistent with that already on the lot of the residential hospice house, or the surrounding area; (5) modifications to the exterior of an existing structure shall be consistent with the existing structure's predominant character as a single-family home; whenever egress stairways or other exterior renovations are required for building code compliance, they shall be contained within the exterior walls of the dwelling; (6) the initial owner or operator of a dwelling used as a residential hospice shall apply to the Building Inspector for an occupancy permit before any persons receive hospice care within the residential hospice house, and shall demonstrate compliance with the preceding paragraphs 1 through 5; each subsequent owner or operator of a dwelling used as a residential hospice house shall apply to the Building Inspector for an occupancy permit and shall demonstrate continued compliance with the preceding paragraphs 1 through 5.</p>							

<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
Boarding house with no arrangements of any description for private cooking or housekeeping	N	N	SP	SP	N	Y	Y
<b><u>INSTITUTIONAL</u></b>  Dormitory for a school with no provisions for private cooking or housekeeping	N	N	N	N	Y	Y	Y
<b><u>BUSINESS</u></b>  Retail establishments serving the general public containing 5750 or more gross square feet of floor area	N	N	N	N	N	SP	SP
Retail establishments serving the general public containing less than 5750 gross square feet of floor area or incidental retail sales which are accessory to a permitted principal use which does not involve 50% of the total floor area or 5750 square feet of the principal use, whichever is lesser. In multi-tenanted structures the provisions of this section will individually apply to each tenant or use and not to the aggregate total of the structure	N	N	N	N	N	Y	Y



<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
Retail trade or shop for custom work or the making of articles to be sold at retail on the premises	N	N	N	N	N	Y	Y
Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises	N	N	N	N	N	Y	Y
Offices and banks	N	N	N	N	N	Y	Y
Craft, consumer, professional or commercial service established dealing directly with the general public and not enumerated elsewhere in this section	N	N	N	N	N	Y	Y
Theaters, indoor moving picture shows, bowling alleys, skating rinks, billiard rooms, and similar commercial amusement or entertainment places	N	N	N	N	N	Y	Y
Personal fitness service establishment; provided, all required off-street parking is provided on-site for all land uses located on the subject site and in adherence with the requirements of Section 5.1.2, Required Parking, absent any waivers from the provisions of Subsections 5.1.1.5 and 5.1.1.6	N	N	N	N	N	Y	N

<b><u>USE</u></b>	<b><u>RRC</u> <u>SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2</u> <u>&amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND-</u> <u>1</u></b>
Personal fitness service establishment; where there is insufficient off-street parking on-site to serve all land uses located thereon in adherence with the requirements of Section 5.1.2 but where it can be demonstrated that the hours, or days, of peak parking for the uses are sufficiently different that a lower total will provide adequately for all uses or activities served by the parking lot	N	N	N	N	N	SP	N
Commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal and oil delivery and the private parking of vehicles for compensation	N	N	N	N	N	SP	SP
Laundry; coin-operated or self-service laundry or dry cleaning establishment; car wash	N	N	N	N	N	SP	SP
Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard	N	N	N	N	N	SP	SP
Airport, heliport, landing strip or area for any type of air-craft	N	N	N	N	N	N	N

<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
Hotel or motel	N	N	N	N	N	SP	SP
Eat-in or take-out restaurant or other eating establishment except a lunch counter incidental to a primary use	N	N	N	N	N	SP	SP
Veterinary office and/or treatment facility	N	N	N	N	N	SP	SP
Medical Clinic	N	N	N	N	N	SP	SP
Outdoor parking in conjunction with the sale or leasing of new or used vehicles on applications filed after September 28, 1978	N	N	N	N	N	SP	SP
<b><u>MANUFACTURING</u></b>  Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	N	N	N	N	N	Y	Y

<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop or similar service	N	N	N	N	N	Y	Y
Welding shop	N	N	N	N	N	SP	SP
Stone cutting, shaping, or finishing in an enclosed building	N	N	N	N	N	SP	SP
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N	N	N	N	SP	SP
Outside truck service or repair for others including body work	N	N	N	N	N	SP	SP
Food processing primarily for wholesale use	N	N	N	N	N	SP	SP
Bottling plant	N	N	N	N	N	Y	Y
Equipment rental service	N	N	N	N	N	Y	Y
Garment manufacturing	N	N	N	N	N	Y	Y
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	N	N	N	N	SP	Y	Y
Genetic biological research	N	N	N	N	N	SP	SP
Radio or television studio	N	N	N	N	N	Y	Y

<b><u>USE</u></b>	<b><u>RRC</u> <u>SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2</u> <u>&amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND-</u> <u>1</u></b>
Medical reference laboratories other than accessory to a medical office	N	N	N	N	N	SP	SP
Dental prosthesis laboratories other than accessory to a dental office	N	N	N	N	N	Y	Y
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	N	N	N	N	N	Y	Y
Any lawful purpose or special use not enumerated elsewhere in this By-Law	N	N	N	N	N	SP	SP
More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law	N	N	N	N	SP	SP	SP

<b><u>USE</u></b>	<b><u>RRC</u> <u>SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2</u> <u>&amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND-</u> <u>1</u></b>
<b><u>ACCESSORY</u></b>  Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use	Y	Y	Y	N	Y	Y	Y
Customary home occupation engaged in by a resident of a single or two-family dwelling, which may include carpentry, cooking, preserving, dress-making, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises.	Y	Y	Y	Y	Y	Y	Y

<b><u>USE</u></b>	<b><u>RRC SRA</u></b>	<b><u>SRB</u></b>	<b><u>GR</u></b>	<b><u>A-1, 2 &amp; 3</u></b>	<b><u>I</u></b>	<b><u>IND</u></b>	<b><u>IND- 1</u></b>
The taking of not more than four non-transient boarders or the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single-family dwelling	SP	SP	SP	Y	SP	SP	SP
Café or lecture room associated with a private school	N	N	N	N	SP	SP	SP
Research laboratory or statistical office associated with a private school, including printing, binding and electrotyping as incidental uses	N	N	N	N	SP	SP	SP
Off-street parking for vehicles associated with a principal use, located on a separate lot owned or leased by the owner of the land on which the principal use is located, within a zoning district in which the principal use is permitted	N	N	N	N	N	SP	SP
Other customary and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas	Y	Y	Y	Y	Y	Y	Y

### 3.2.2 Uses in the Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business Districts

The following schedule of use regulations shall apply in the B, CSB, CB, ASB, and HAB districts.

<u>USE</u>	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASB</u>	<u>HAB</u>
<p><b><u>AGRICULTURE</u></b></p> <p>Farmers Market, not to exceed once a week, during the season from May 15 to November 30, which may take place on existing parking areas serving one of the following uses: (i) municipal/public uses, (ii) religious and educational uses protected by MGL Chapter 40A, Section 3 or (iii) in a commercially zoned district commercial uses, provided that the special permit granting authority determines that in addition to other necessary findings under Section 7.5.2 of the By-Law adequate parking and loading areas are maintained to serve such other uses during the Farmers Market.</p>	SP	SP	SP	SP	SP
Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of 2 ½ acres	Y	Y	Y	Y	Y
Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject property contains a minimum of 2 ½ acres	Y	Y	Y	Y	Y
Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises	Y	Y	Y	Y	Y



USE	B	CSB	CB	ASB	HAB
Sale during Christmas season by a non-profit corporation or organization of uncut or cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises and associated, related merchandise, including the outdoor display of trees, wreaths and merchandise. Outdoor display is permitted on existing parking spaces, except that adequate parking and loading must be maintained	Y	Y	Y	Y	Y
<b><u>PUBLIC, SEMI-PUBLIC &amp; INSTITUTIONAL</u></b>					
Church or other place of worship, parish house, rectory, convent and other religious institution	Y	Y	Y	Y	Y
School – public, religious, sectarian or denominational	Y	Y	Y	Y	Y
Dormitory for a school with no provisions for private cooking or housekeeping	Y	N	N	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y	Y
Public park and playground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y
Public passenger station	Y	SP	SP	Y	Y
Child care facility	Y	Y	Y	Y	Y
Other private school, nursery, or kindergarten	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	Y	Y
Cemetery	SP	N	N	Y	Y
Private club not conducted as a business	SP	SP	SP	SP	SP

<b><u>RESIDENCE</u></b>					
Single-family detached dwelling	Y	N	N	Y	Y
Planned residential development	N	N	N	SP	SP
Residential compound	N	N	N	SP	SP
Two-family detached dwelling	Y	N	N	Y	Y
Conversion of a single-family dwelling to a two-family dwelling	N	N	N	Y	Y
Apartment or multifamily dwelling *Allowed on second floor only; **Allowed on second floor and in half-story directly above second floor only; consistent with density requirements for A-1	N	SP*	SP**	SP	SP
The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (60+); provided, (1) that such structure so used shall not be subdivided into separate apartments, (2) that occupancies therein by non-owners occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which permits have been issued under the authority of this section, (4) that no more than 20% of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted in any one year shall not exceed 5  *Applies only to structures in existence prior to Dec. 31, 1982, otherwise N	SP*	N	N	SP	SP
Boarding house with no arrangements of any description for private cooking or housekeeping	Y	N	N	Y	Y



<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
<p>Retail establishments serving the general public if containing less than 5750 gross sq. ft. of floor area or incidental retail sales which are accessory to a permitted principal use which does not involve 50% of the total floor area or 5750 square feet of the principal use, whichever is lesser. In multi-tenanted structures the provisions of the section will individually apply to each tenant or use and not to the aggregate total of the structure:</p> <p>Grocery store  * If under 1,000 sq. ft. of gross floor area</p>	Y	Y	Y*	Y	SP
<p>Outdoor parking, storage or display of motor vehicles in conjunction with the sale or leasing of new or used motor vehicles on applications filed after September 28, 1978</p> <p>Other outdoor display of goods</p> <p>Retail trade or shop for custom work or the making of articles to be sold at retail on the premises</p> <p>Other retailing</p>	<p>SP</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>N</p> <p>N</p> <p>Y</p> <p>Y</p>	<p>N</p> <p>N</p> <p>Y</p> <p>Y</p>	<p>N</p> <p>N</p> <p>Y</p> <p>Y</p>	<p>N</p> <p>N</p> <p>Y</p> <p>SP</p>
Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises	Y	Y	Y	Y	Y
Banks	Y	Y	Y	Y	Y

<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
Offices totaling more than 20,000 square feet, unless created through change of use from either retailing or any principal use listed below this one in Section 3.2.2, such as garment manufacturing:  For consumer sales or service  Others * Allowed on second floor only	Y  Y	Y  Y	Y  Y*	SPC  SPC	SPC  SPC
Smaller amounts of office space, or offices created through change of use from either retailing or any principal use listed below this one in this Section 3.2.2, such as garment manufacturing:  For consumer sales or service  Others *Allowed on second floor only	Y  Y	Y  Y	Y  Y*	Y  Y	Y  Y
Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section	Y	Y	Y	Y	Y
Theaters and indoor moving picture shows; pool and billiard rooms	Y	SP	SP	SP	N
Electronic game and amusement arcades	Y	N	N	N	N
Bowling alleys, skating rinks, and similar commercial amusement or entertainment places	Y	N	N	N	N

<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
Personal fitness service establishment; provided, all required off-street parking is provided on-site for all land uses located on the subject site and in adherence with the requirements of Section 5.1.2, Required Parking, absent any waivers from the provisions of Subsections 5.1.1.5 and 5.1.1.6	Y	Y	Y	Y	Y
Personal fitness service establishment; where there is insufficient off-street parking on-site to serve all land uses located thereon in adherence with the requirements of Section 5.1.2 but where it can be demonstrated that the hours, or days, of peak parking for the uses are sufficiently different that a lower total will provide adequately for all uses or activities served by the parking lot	SP	SP	SP	SP	SP
Automobile service station, excluding repair services	SP	SP	N	N	N
Other commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal and oil delivery and the private parking of vehicles for compensation	SP	N	N	N	N
Car wash	SP	N	N	N	N
Laundry; coin operated or self-service laundry or dry cleaning establishment	SP	SP	SP	SP	SP
Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard	SP	N	N	N	N
Airport, heliport, landing strip or area for any type of aircraft	N	N	N	N	N
Hotel or motel	SP	N	N	N	SP

<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
Eat in or take-out restaurant or other eating establishment except a lunch counter incidental to a primary use:					
Restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter	SP	SP	SP	SP	N
Take-out operation accessory to the above	SP	SP	SP	SP	N
Take-out food counter as an accessory to a food retail or other non-consumptive retail establishment	SP	SP	SP	SP	N
Retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises	SP	SP	SP	SP	N
Take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere	SP	SP	N	SP	N
Fast-food establishment offering over-the-counter sale of on/off premises prepared food or beverage primarily intended for immediate consumption and prepared in such a manner to be readily eaten from easily disposable containers	SP	SP	N	N	N
Veterinary office and/or treatment facility:					
With boarding of animals	SP	N	N	N	N
Without boarding of animals	SP	SP	SP	SP	SP
Medical clinic	SP	SP	SP	SP	SP

<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
<b><u>MANUFACTURING</u></b>					
Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	SP	N	N	N	SP
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop, or similar service	SP	N	N	N	SP
Welding shop	N	N	N	N	N
Stone cutting, shaping, or finishing in an enclosed building	N	N	N	N	N
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N	N	N	N
Outside truck service or repair for others including body work	N	N	N	N	N
Food processing primarily for wholesale use	N	N	N	N	N
Bottling plant	N	N	N	N	N
Equipment rental service	Y	N	N	SP	SP
Garment manufacturing	SP	N	N	SP	SP
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	SP	N	N	SP	SP
Genetic biological research	N	N	N	N	SP
Radio or television studio	SP	N	N	SP	SP
Medical reference laboratories other than accessory to a medical office	SP	N	N	SP	SP
Dental prosthesis laboratories other than accessory to a dental office	SP	N	N	SP	SP



<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	SP	N	N	SP	SP
Any lawful purpose or special use not enumerated elsewhere in this By-Law	SP	N	N	N	N
More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law	SP	SP	SP	SP	SP
<b><u>ACCESSORY</u></b>  Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use	Y	N	N	Y	Y
Customary home occupation engaged in by a resident of a single or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provide that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises	Y	N	N	Y	Y

<b><u>USE</u></b>	<b><u>B</u></b>	<b><u>CSB</u></b>	<b><u>CB</u></b>	<b><u>ASB</u></b>	<b><u>HAB</u></b>
The taking of not more than four non-transient borders or the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single-family dwelling	Y	N	N	Y	Y
Café or lecture room associated with a private school	SP	N	N	SP	SP
Research laboratory or statistical office associated with a private school, including printing, binding, and electrotyping as incidental uses	SP	N	N	SP	SP
Lunch counter incidental to a principle use	Y	SP	SP	Y	Y
Other customary and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas	Y	SP	SP	Y	Y
Off-street parking for vehicles associated with a principle use, located on a separate lot owned or leased by the owner of the land on which the principle use is located, within a zoning district in which the principle use is permitted	SP	SP	SP	SP	SP
Other accessory uses incidental to lawful principle uses	Y	SP	SP	Y	Y
Seasonal temporary outdoor seating for restaurants serving meals for consumption on the premises and at tables with service provided by waitress or waiter	Y#	Y#	Y#	Y#	N

### **3.2.3 Uses in the Neighborhood Business District**

#### **3.2.3.1 Permitted Uses**

The following uses are permitted within the Neighborhood Business District as a matter of right:

- (a) Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of 2 ½ acres.
- (b) Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, and provided the subject property contains a minimum of 2 ½ acres.
- (c) Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises.
- (d) Churches, synagogues, and temples; includes associated dwellings for religious personnel and associated buildings used for religious purposes.
- (e) Elementary or secondary school, trade or vocational school for elementary and secondary school students; operated by a public agency, or by a religious sect or denomination, or a non-profit educational corporation; includes associated buildings and land used for educational purposes.
- (f) Public or private, college or technical school, trade or vocational school operated for college age students; operated by a public agency, or by a religious sect or denomination, or a non-profit educational corporation; includes buildings, land or other facilities used for educational purposes but not including space used for revenue producing purposes not directly associated with the education of students.
- (g) Child care facility.
- (h) Public library and museum and philanthropic institution.
- (i) Public parks, playgrounds, municipal buildings or uses.
- (j) Single-family detached dwelling.
- (k) Two-family detached dwelling, provided they comply with the reconstruction provisions of Section 1.4.7.4.
- (l) Retail shop for the sale of convenience goods often bought on a daily basis such as candy, newspapers and tobacco products, provided the gross floor area so used does not exceed two thousand five hundred (2,500) square feet per establishment.
- (m) Retail shop for the sale of books, stationary, drugs, sporting goods, jewelry, photographic equipment and supplies, flowers, novelties, cards, footwear, and the like

which are typically of a size that a customer can carry them by hand, provided the gross floor area so used does not exceed two thousand five hundred (2,500) square feet per establishment.

- (n) Retail shop for the sale of apparel, fabrics and accessories, hardware, paint, wallpaper, lawn and garden supplies and equipment, provided the gross floor area so used does not exceed two thousand five hundred (2,500) square feet per establishment.
- (o) Grocery store, provided the gross floor area so used does not exceed two thousand five hundred (2,500) square feet per establishment.
- (p) Beauty salon, day spa, barber shop, tailor, dressmaker, shoe repair, photographic processing, photocopying and reduction services but not commercial printing, provided the gross floor area so used does not exceed one thousand five hundred (1,500) square feet per establishment.
- (q) Medical, dental or psychiatric office, provided the gross floor area so used does not exceed one thousand (1,000) square feet per company.
- (r) Real estate sales or rental office, provided the gross floor area so used does not exceed one thousand five hundred (1,500) square feet per company.
- (s) Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 square feet, is regularly devoted to such use.
- (t) Customary home occupation engaged in by a resident of a single or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises.
- (u) The taking of not more than four non-transient borders or the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single-family dwelling.
- (v) Professional offices, not listed in (q), provided the gross floor area so used does not exceed one thousand five hundred (1,500) square feet per company.
- (w) Offices for consumer sales and/or services totaling no more one thousand five hundred (1,500) square feet per company.
- (x) General office uses, provided the gross floor area so used does not exceed one thousand five hundred (1,500) square feet per company.

As to uses (l)-(x) above, all operations must be conducted entirely within an enclosed building. Storage of equipment and products outdoors during non-operating hours is prohibited. Commercial delivery and/or maintenance trucks must be parked during non-operating hours in a garage or in an outdoor area not within the required setback for the principal building and shall be screened from the view of the abutting lots and street(s). If operations of the aforementioned uses are in whole or in part conducted outdoors during operating hours, such uses shall be deemed to be uses permitted by special permit pursuant to Section 3.2.3.2.

### **3.2.3.2 Uses Permitted By Special Permit**

The following uses are permitted within the Neighborhood Business District only upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as they may require:

- (a) Public passenger station.
- (b) Private school, nursery, or kindergarten not otherwise classified under Section 3.2.3.1.
- (c) Bank, provided the gross floor area so used does not exceed three thousand (3,000) square feet gross floor area per company.
- (d) Laundry or dry cleaning pick-up station with processing done elsewhere; self-service laundromat; provided the gross floor area so used does not exceed one thousand five hundred (1,500) square feet per establishment.
- (e) Commercial garage for motor vehicle maintenance and minor repairs limited to engine tune-up, lubrication and installation of replacement parts, adjustment or replacement of brakes or tires, but not including engine overhaul, body work or painting.
- (f) Retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises, provided the gross floor area so used does not exceed two thousand (2,000) square feet per establishment.
- (g) Take-out food counter as an accessory to a food retail or other non-consumptive retail establishment.
- (h) Lunch counter incidental to a principal use.
- (i) More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law.
- (j) Other accessory uses incidental to lawful principal uses.
- (k) Medical, dental or psychiatric office exceeding one thousand (1,000) square feet gross floor area per company.

- (l) Professional offices, not listed in 3.2.3.1(q), exceeding one thousand five hundred (1,500) square feet gross floor area per company.
- (m) Offices for consumer sales and/or services exceeding one thousand five hundred (1,500) square feet gross floor area per company.
- (n) General office uses exceeding one thousand five hundred (1,500) square feet gross floor area per company.
- (o) Uses (l)-(x) of Section 3.2.3.1 conducting operations in whole or in part outdoors during operating hours.

Uses conducted in whole or in part outdoors during operating hours and/or storing equipment and product outdoors during non-operating hours shall be required to provide such screening and landscaping as deemed necessary by the SPGA to shield neighboring residential uses. Except for use (e), commercial delivery and/or maintenance trucks must be parked during non-operating hours in a garage or in an outdoor area not within the required setback for the principal building and shall be screened from the view of the abutting lots and street(s).

### **3.2.4 Uses in the New England Business Center District**

#### **3.2.4.1 Permitted Uses**

The following uses are permitted within the New England Business Center District as a matter of right:

- (a) Uses exempt from local zoning control pursuant to M.G.L. Chapter 40A, Section 3.
- (b) Public parks and playgrounds, municipal buildings or uses.
- (c) Professional, business or administrative office, but not including a medical clinic or Medical Services Building or medical, surgical, psychiatric, dental, orthodontic, or psychologist group practices comprised of three or more such professionals (hereinafter "Group Practices") or physical therapy, alternative medicine practices, wellness treatments, including but not limited to, acupuncture, yoga, chiropractic and/or nutrition services. "Professional" shall include professional medical, surgical, psychiatric, dental, orthodontic or psychologist practice by a group of two or fewer such professionals ("Non-group Practice").
- (d) Bank or Credit Union.
- (e) Wholesale distribution facilities in an enclosed structure, excluding the storage of flammable liquids, gas or explosives.
- (f) Medical laboratory or laboratory engaged in scientific research and development, and experimental and testing activities including, but not limited to, the fields of biology,

genetics, chemistry, electronics, engineering, geology, medicine and physics, which may include the development of mock-ups and prototypes.

- (g) Radio or television studio.
- (h) Light non-nuisance manufacturing, including but not limited to the manufacture of electronics, pharmaceutical, bio-pharmaceutical, medical, robotic, and micro-biotic products, provided that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed of in a manner so as not to create a nuisance or hazard to safety or health.
- (i) Telecommunications facility housed within a building.
- (j) On the ground floor only of a multi-story building, consumer and commercial service establishments dealing directly with the general public; business service centers; retail establishments; pharmacies (not affiliated with Group Practices as defined in Section 3.2.4.1, physical therapy, alternative medicine, wellness treatments such as acupuncture, yoga, chiropractic and/or nutrition services); day care uses (other than adult day care establishments requiring a special permit under Section 3.2.4.2 (b) hereof); indoor athletic and exercise facilities; and laundry and dry-cleaning pick-up stations where processing is done elsewhere. Except for day care uses and indoor athletic and exercise facilities, each business establishment shall be limited to 15,000 square feet of floor area.
- (k) Other customary and proper accessory uses incidental to lawful principal uses.
- (l) More than one building on a lot.
- (m) More than one use on a lot.

#### **3.2.4.2 Uses Permitted by Special Permit**

The following uses are permitted within the New England Business Center District upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as they may require:

- (a) Public light-rail train station.
- (b) Adult day care facility.
- (c) Private school, nursery, or kindergarten not otherwise classified under Section 3.2.4.1.
- (d) Hotel.
- (e) Indoor athletic or exercise facilities and/or outdoor pool(s) associated with such facilities.

- (f) Eat in or take-out restaurants or other eating establishments, including coffee shops, provided they are located on the ground floor of a multi-story building. Further provided that drive-thru restaurants or other eating establishments are prohibited.
- (g) External automatic teller machine, drive-up window or auto-oriented branch bank accessory to a bank or credit union permitted under Section 3.2.4.1(d) hereof.
- (h) Off-street parking for vehicles associated with a principal use located on a lot that comprises land in two or more districts where the use is not otherwise allowed in the district in which the parking is to be located.
- (i) Group Practices as defined in Section 3.2.4.1 and alternative medicine practices, physical therapy, and wellness treatments facilities including, but not limited to, acupuncture, yoga, chiropractic and/or nutrition services. Such uses may have customary and proper accessory uses incidental to the lawful principal uses, including but not limited to, pharmacies. If the principal use is located on the ground floor, then the affiliated pharmacy may be located there also.

#### **3.2.4.3 Special Permit, Parking Garage**

Notwithstanding the dimensional requirements and the use table of this By-Law the Planning Board is authorized to issue a special permit for a parking garage and/or a parking structure for more than three (3) vehicles, including both enclosed and open structures, above and below ground, that serve uses located in the NEBC, MU-128 and HC-128 districts, where the parking garage and/or parking structure is located in the immediate vicinity of and on the same side of Highland Avenue as the uses it serves, subject to such setback requirements as the Board may impose.

#### **3.2.4.4 Special Permit, Intensity of Use**

Projects that seek a floor area ratio beyond what is permitted by right pursuant to Section 4.8 shall require a special permit and shall be subject to Section 6.8 Special Permit Conditions in the New England Business Center District. Provided, however, that nothing contained herein shall impair the rights conferred by Section 1.4 of this By-Law.

### **3.2.5 Uses in the Highland Commercial-128 District**

#### **3.2.5.1 Permitted Uses**

The following uses are permitted within the Highland Commercial-128 District as a matter of right:

- (a) Uses exempt from local zoning control pursuant to M.G.L. Chapter 40A, Section 3.
- (b) Public parks and playgrounds, municipal buildings or uses.



- (c) Retail establishment or combination of retail establishments serving the general public where each establishment contains less than 10,000 square feet of floor area and where all items for sale or rent are kept inside a building.
- (d) Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises.
- (e) Craft, consumer or commercial service establishment dealing directly with the general public.
- (f) Professional, business or administrative office, but not including a medical clinic or Medical Services Building or Group Practices or alternative medicine practices, physical therapy, and wellness treatment facilities including, but not limited to, acupuncture, yoga, chiropractic and/or nutrition services, all as defined in Sections 1.3 and 3.2.4.1.
- (g) Bank or Credit Union.
- (h) Medical laboratory or laboratory engaged in scientific research and development, and experimental and testing activities including, but not limited to, the fields of biology, genetics, chemistry, electronics, engineering, geology, medicine and physics, which may include the development of mock-ups and prototypes but not the manufacture of finished products. Not allowed on the first floor.
- (i) Other customary and proper accessory uses incidental to lawful principal uses.
- (j) More than one building on a lot.
- (k) More than one use on a lot.

#### **3.2.5.2 Uses Permitted by Special Permit**

The following uses are permitted within the Highland Commercial-128 District upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as they may require:

- (a) Public light-rail train station.
- (b) Adult day care facility.
- (c) Private school, nursery, or kindergarten not otherwise classified under Section 3.2.5.1.
- (d) Retail establishment or combination of retail establishments serving the general public where each establishment contains more than 10,000 but less than 25,000 square feet of floor area and where all items for sale or rent are kept inside a building.
- (e) Laundry or dry-cleaning pick-up station with processing done elsewhere.

- (f) Equipment rental service but not including any business that uses outside storage.
- (g) Hotel.
- (h) Restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter.
- (i) Take-out operation accessory to the above restaurant.
- (j) Take-out food counter as an accessory to a food retail or other non-consumptive retail establishment.
- (k) Retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises.
- (l) Take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere.
- (m) Fast-food establishment offering over-the-counter sale of on/off premises prepared food or beverage primarily intended for immediate consumption and prepared in such a manner to be readily eaten from easily disposable containers.
- (n) Veterinary office and/or treatment facility including convalescent stays but not the boarding of animals.
- (o) Indoor athletic or exercise facilities.
- (p) External automatic teller machine, drive-up window or auto-oriented branch bank accessory to a bank or credit union permitted under Section 3.2.5.1(g) hereof.
- (q) Off-street parking for vehicles associated with a principal use located on a lot that comprises land in two or more districts where the use is not otherwise allowed in the district in which the parking is to be located.
- (r) Other customary and proper accessory uses incidental to lawful principal uses.

### **3.2.5.3 Special Permit, Parking Garage**

Notwithstanding the dimensional requirements and the use table of this By-Law the Planning Board is authorized to issue a special permit for a parking garage and/or a parking structure for more than three (3) vehicles, including both enclosed and open structures, above and below ground, that serve uses located in the NEBC, MU-128 and HC-128 districts, where the parking garage and/or parking structure is located in the immediate vicinity of and on the same side of Highland Avenue as the uses it serves, subject to such setback requirements as the Board may impose.

### **3.2.5.4 Special Permit, Intensity of Use**

Projects that seek a floor area ratio beyond what is permitted by right pursuant to Section 4.5 shall require a special permit and shall be subject to Section 6.8 Special Permit Conditions in the Highland Commercial-128 District. Provided, however, that nothing contained herein shall impair the rights conferred by Section 1.4 of this By-Law.

### **3.2.6 Uses in the Mixed Use-128 District**

#### **3.2.6.1 Permitted Use**

The following uses are permitted within the Mixed Use-128 District as a matter of right:

- (a) Uses exempt from local zoning control pursuant to M.G.L. Chapter 40A, Section 3.
- (b) Public parks and playgrounds, municipal buildings or uses.
- (c) Retail establishment or combination of retail establishments serving the general public where each establishment contains less than 10,000 square feet of floor area and where all items for sale or rent are kept inside a building.
- (d) Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises.
- (e) Craft, consumer or commercial service establishment dealing directly with the general public.
- (f) Laundry or dry cleaning pick-up station with processing done elsewhere.
- (g) Professional, business or administrative office, but not including a medical clinic or Medical Services Building or Group Practices or alternative medicine practices, physical therapy, and wellness treatment facilities including, but not limited to, acupuncture, yoga, chiropractic and/or nutrition services, all as defined in Sections 1.3 and 3.2.4.1.
- (h) Bank or Credit Union.
- (i) Wholesale distribution facilities in an enclosed structure, excluding the storage of flammable liquids, gas or explosives.
- (j) Medical laboratory or laboratory engaged in scientific research and development, and experimental and testing activities including, but not limited to, the fields of biology, genetics, chemistry, electronics, engineering, geology, medicine and physics, which may include the development of mock-ups and prototypes.
- (k) Radio or television studio.

- (l) Light non-nuisance manufacturing, including but not limited to the manufacture of electronics, pharmaceutical, bio-pharmaceutical, medical, robotic, and micro-biotic products, provided that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed of in a manner so as not to create a nuisance or hazard to safety or health.
- (m) Telecommunications facility housed within a building.
- (n) Other customary and proper accessory uses incidental to lawful principal uses.
- (o) More than one building on a lot.
- (p) More than one use on a lot.

### **3.2.6.2 Uses Permitted By Special Permit**

The following uses are permitted within the Mixed Use-128 District upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as they may require:

- (a) Public light-rail train station.
- (b) Adult day care facility.
- (c) Private school, nursery, or kindergarten not otherwise classified under Section 3.2.6.1.
- (d) Retail establishment or combination of retail establishments serving the general public where each establishment contains more than 10,000 but less than 25,000 square feet of floor area and where all items for sale or rent are kept inside a building.
- (e) Equipment rental service but not including any business that uses outside storage.
- (f) Hotel.
- (g) Eat-in or take-out restaurant or other eating establishment except that a lunch counter incidental to a primary use shall be permissible by right.
- (h) Veterinary office and/or treatment facility including convalescent stays but not the boarding of animals.
- (i) Indoor athletic or exercise facilities.
- (j) External automatic teller machine, drive-up window or auto-oriented branch bank accessory to a bank or credit union permitted under Section 3.2.6.1(h) hereof.
- (k) Off-street parking for vehicles associated with a principal use located on a lot that comprises land in two or more districts where the use is not otherwise allowed in the district in which the parking is to be located.

### **3.2.6.3 Special Permit, Parking Garage**

Notwithstanding the dimensional requirements and the use table of this By-Law the Planning Board is authorized to issue a special permit for a parking garage and/or a parking structure for more than three (3) vehicles, including both enclosed and open structures, above and below ground, that serve uses located in the NEBC, MU-128 and HC-128 districts, where the parking garage and/or parking structure is located in the immediate vicinity of and on the same side of Highland Avenue as the uses it serves, subject to such setback requirements as the Board may impose.

### **3.2.6.4 Special Permit, Intensity of Use**

Projects that seek a floor area ratio beyond what is permitted by right pursuant to Section 4.9 shall require a special permit and shall be subject to Section 6.8 Special Permit Conditions in the Mixed Use-128 District. Provided, however, that nothing contained herein shall impair the rights conferred by Section 1.4 of this By-Law.

## **3.3 Uses in Flood Plain District**

The purpose of the Flood Plain District is to protect the streams, rivers, and other watercourses in the Town and their adjoining lands; to protect the health and safety of persons and property against the hazards of flooding; to preserve and maintain the ground water table for water supply purposes; to protect the community against detrimental use and development of lands adjoining such water courses; to conserve the watershed areas of the Town for the health, safety, welfare of the public; and to preserve the balance of the components of the ecosystem of the watercourses and adjoining land.

The Flood Plain District shall be considered as overlying other use districts established by this By-Law. Within the Flood Plain District, the requirements of the underlying district continue to apply insofar as they comply with the provisions of this section. In the event there is a conflict or difference between the provisions of the overlying and underlying district the more restrictive shall apply. Compliance with these provisions shall not be construed as satisfying the provisions of Massachusetts General Laws Chapter 131.

### **3.3.1 Prohibited Uses**

The following uses are prohibited, regardless of other requirements:

- (a) Manufacture, use, transport, storage or disposal of toxic or hazardous materials.
- (b) Sanitary landfill; junkyard; salvage yard; and other solid waste disposal.

- (c) Encroachments including fill, replacement of soil with impervious material, new construction, substantial improvements (the cost of which exceeds 50 percent of the market value of the structure), or other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels in the Town during the occurrence of a 100-year flood.
- (d) Swimming pools.

### **3.3.2 Permitted Uses**

- (a) Uses directly related to the conservation of water, plants, and wildlife.
- (b) Outdoor recreation activities and facilities, including unpaved play areas, nature study, boating, fishing and hunting where otherwise legally permitted which do not require removal or transfer of earth.
- (c) Wildlife management areas, landings, foot, bicycle and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of any watercourse.
- (d) Grazing and farming, including truck gardening and harvesting of crops.
- (e) Forestry and nurseries.
- (f) Removal from a watercourse of silt and other accumulated debris which tends to interfere with the natural flow patterns of the watercourse.
- (g) Dwellings for sustained human habitation lawfully existing which shall not hereafter be enlarged or extended to increase ground coverage.

### **3.3.3 Uses Requiring a Special Permit**

The Board of Appeals may grant a Special Permit for the following:

- (a) All new construction and substantial improvements (the cost of which exceeds 50 percent of the market value of the structure before the improvements) of residential structures which have the lowest floor, including basement or cellar, elevated to or above the flood plain elevation defined on the Norfolk County Flood Insurance Rate Maps (the 100-year flood plain elevation) and the Town of Needham Zoning Map. No new construction or substantial improvement shall be permitted unless it can be demonstrated by the applicant that the cumulative effect of the proposed development will not increase the water surface elevation of the 100-year flood.
- (b) All new construction and substantial improvements (the cost of which exceeds 50 percent of the market value of the structure before the improvement) of non-residential structures which have the lowest floor, including basement or cellar, elevated to or above the flood plain elevation defined on the Norfolk County Flood Insurance Rate Maps (the

100-year flood elevation) and the Town of Needham Zoning Map or are flood proofed and watertight to the applicable flood elevation. In the case where watertight flood proofing is permitted, a registered professional engineer or architect shall certify to the Building Inspector that the methods used are adequate to withstand flood depth pressures and velocities impact and the uplift of forces and other factors associated with the 100-year flood. No new construction or substantial improvement shall be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed development will not increase the water surface elevation of the 100-year flood.

- (c) Small non-residential structures of less than 100 square feet of floor area used in connection with recreation or the growing, harvesting, storage, or sale of crops raised on the premises.
- (d) Any driveway and walkway ancillary to uses otherwise permitted by this section.
- (e) Tennis courts or other uses requiring a similarly prepared surface.
- (f) Water and sewer pumping stations.
- (g) Any use not expressly permitted or prohibited.
- (h) Any use permitted in the underlying district in which the land is situated, subject to the same use and development restrictions as may otherwise apply thereto, provided that the land designated as being within the Flood Plain District is found by the Board of Appeals not, in fact, to be subject to flooding. The Board of Appeals shall refer each question on this matter to the Planning Board, Conservation Commission, Board of Health, and Department of Public Works, and shall not act until these agencies have reported their recommendations or 45 days have elapsed after such referral and no report has been received.

#### **3.3.4 Special Permit Criteria**

In granting a special permit, the Board of Appeals shall consider, among other factors, the following:

- (a) Geographic location of proposed building and security of driveway or walkway access during flooding.
- (b) Foundation elevations of proposed building and security of foundation during flooding, including assurance that foundations would not be undermined and that the proposed building would not be floated off, swept away, or battered during flooding.
- (c) Disposal of sewage from the proposed building and containment of sewage during flooding.
- (d) Safety of water, sewage, gas, electric and fuel utilities from breaking, igniting, electrocution or other dangers during flooding.

- (e) Soil structure and the general character of development in the neighborhood.
- (f) The preservation of the natural water channel passage of flood flows.
- (g) The retention of existing flood water storage capacity.

### **3.3.5 General Provisions Relating to Flood Plain District**

- (a) All development in the Flood Plain District, including structural and non-structural activities, whether permitted by right or by special permit shall be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following: (i) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR); (ii) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00); (iii) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); and (iv) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5). Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.
- (b) All subdivision proposals in the Flood Plain District shall be reviewed to assure that: (i) such proposals minimize flood damage; (ii) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and (iii) adequate drainage is provided to reduce exposure to flood hazards.
- (c) Base flood elevation data shall be provided for subdivision proposals or other developments of greater than 50 lots or 5 acres, within unnumbered A zones, as shown on the Norfolk County Flood Insurance Rate Map (FIRM) dated July 17, 2012.
- (d) Within areas designated Zone A, AH, and AE, along watercourses that have not had a regulatory floodway designated, as shown on the Norfolk County Flood Insurance Rate Map (FIRM), Floodway Map, and Flood Insurance Study, dated July 17, 2012, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (e) Within Zone AH on the FIRM, adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

### **3.3.6 National Flood Insurance Program (NFIP) Requirements**

Reference is hereby made to the Norfolk County Flood Insurance Rate Map (FIRM) and Flood Insurance Study dated July 17, 2012 – both of which are on file in the office of the Town Clerk, Planning Board, Building Official, Conservation Commission and Engineering Department.



In granting special permits authorized above under Subsections 3.3.3 and 3.3.4, the Board of Appeals shall, as appropriate, require the following as conditions of approval:

- (a) Require that new and replacement water supply and sanitary sewerage systems be designed to minimize or eliminate infiltration of flood waters into said systems, as well as discharges from said systems into flood waters;
- (b) Require that new adequate drainage is provided to reduce exposure to flood hazards in flood-prone areas, and more specifically, require adequate drainage around proposed structures on slopes to guide flood waters around and away from such structures; and
- (c) Require that adjacent communities, the site coordination office and the NFIP State Coordinator at the Massachusetts Department of Conservation and Recreation be notified prior to any alteration or relocation of a water course, and that a copy of such notification be submitted to the Federal Emergency Management Agency (FEMA) Administrator.

### **3.4 Aquifer Protection District**

#### **3.4.1 Purpose of District**

The purpose of this Aquifer Protection District is to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Needham; to preserve and protect existing and potential sources of drinking water supplies; to conserve the natural resources of the town; and to prevent temporary and permanent contamination of the environment.

#### **3.4.2 Scope of Authority**

The Aquifer Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses which fall within the Aquifer Protection District must comply with the requirements of this district as well as with the underlying zoning. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Aquifer Protection District.

#### **3.4.3 Definitions**

For the purposes of this section, the following words and phrases shall have the following meanings:

- (a) **Aquifer** – Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

- (b) **Aquifer Protection District** – The zoning district defined to overlay other zoning districts in the Town of Needham delineated on a map entitled, “Zoning Map of the Town of Needham, Massachusetts” as originally dated September 1924 and revised to May 15, 1989, and as revised and amended to date and on file in the Office of the Town Clerk. The aquifer protection district may include specifically designated recharge areas.
- (c) **Impervious Surface** – Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.
- (d) **Mining** – the removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.
- (e) **Recharge Areas** – Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II, or Zone III.
- (f) **Toxic or Hazardous Material** – Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Needham. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.
- (g) **Zone II** – The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 Code of Massachusetts Regulations (CMR) 22.00.
- (h) **Zone III** – The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00.

#### **3.4.4 Establishment and Delineation of Aquifer Protection District**

For the purposes of this district, there are hereby established within the town certain aquifer protection areas, consisting of aquifers or recharge areas which are delineated on a map entitled “Zoning Map of the Town of Needham, Massachusetts” as originally dated September 1924 and revised to May 15, 1989, and as revised and amended to date and on file in the Office of the Town Clerk.

#### **3.4.5 District Boundary Disputes**

If any land designated as lying within an Aquifer Protection District is proved not to possess the characteristics by which such districts are delineated and which this By-Law seeks to protect,

the Special Permit Granting Authority may permit uses of the land otherwise prohibited or requiring a special permit under this section if it finds that such use will not be detrimental to the environment or the health, safety and general welfare of the community. Resolution of such boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority. Any application for a special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

### **3.4.6 Use Regulation**

In the Aquifer Protection District the following regulations shall apply:

- (a) **Permitted Uses** – The following uses are permitted within the Aquifer Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:
  - (1) conservation of soil, water, plants, and wildlife;
  - (2) outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
  - (3) foot, bicycle and/or horse paths, and bridges;
  - (4) normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
  - (5) maintenance, repair, and enlargement of any existing structure, subject to Section 3.4.6 (b) (prohibited uses) and Section 3.4.6 (c) (special permitted uses);
  - (6) residential development, subject to Section 3.4.6 (b) (prohibited uses) and Section 3.4.6 (c) (special permitted uses);
  - (7) farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 3.4.6 (b) (prohibited uses) and Section 3.4.6 (c) (special permitted uses);
  - (8) necessary public/utilities designated so as to prevent contamination of groundwater. Underground storage tanks related to these activities are not categorically permitted.
- (b) **Prohibited Uses** -- The following uses are prohibited within the Aquifer Protection District:
  - (1) landfills and open dumps as defined in 310 CMR 19.006;

(2) storage of liquid petroleum products, except the following:

- i. normal household use, outdoor maintenance, and heating of a structure;
- ii. waste oil retention facilities required by statute, rule, or regulation;
- iii. emergency generators required by statute, rule, or regulation;
- iv. treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters;

provided that storage, listed in items i through iv above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity.

(3) land filling of sludge or septage as defined in 310 CMR 32.05;

(4) storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

(5) individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater, except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design;

(6) storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

(7) storage of animal manure unless covered or contained;

(8) earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within 6 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;

(9) facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.00, except the following:

- i. very small quantity generators as defined under 310 CMR 30.00;
- ii. household hazardous waste collection centers and events under 310 CMR 30.390;
- iii. waste oil retention facilities required by MGL Chapter 21, Section 52A;

- iv water remediation treatment works approved under 314 CMR 5.00.
- (10) automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
- (11) treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
  - i the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - ii the replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
  - iii treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater.
- (12) storage of liquid hazardous materials, as defined in MGL Chapter 21E, unless in a free standing container within a building or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;
- (13) industrial and commercial uses which discharge process wastewater on-site;
- (14) stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
- (15) storage of commercial fertilizers and soil conditioners, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;
- (16) the use of septic system cleaners which contain toxic or hazardous chemicals.

(c) **Uses and Activities Requiring A Special Permit** – The following uses and activities are permitted within the Aquifer Protection District only upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as they may require:

- (1) enlargement or alteration of existing uses that do not conform to the Aquifer Protection District;
- (2) the application of pesticides, including herbicide, insecticides, fungicides, and rodenticides, for non-domestic or non-agricultural uses in accordance with state and federal standards. The special permit shall be granted if such standards are met. If applicable, the applicant should provide documentation of compliance with a Yearly Operating Plan (YOP) for vegetation management operations under 333

CMR 11.00 or a Department of Food and Agriculture approved Pesticide Management Plan or Integrated Pest Management (IPM) program under 333 CMR 12.00;

- (3) the application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition, and sedimentation;
- (4) those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use permitted in the underlying zoning (except as prohibited under Section 3.4.6.b). Such activities shall require a special permit to prevent contamination of groundwater;
- (5) the construction of dams or other water control devices, ponds, pools or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;
- (6) any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are not feasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

#### **3.4.7 Procedures For Issuance of Special Permit**

- (a) **Special Permit Granting Authority** – The Special Permit Granting Authority under this By-Law shall be the Planning Board. Such special permit shall only be granted if the Special Permit Granting Authority determines, after recommendations from the Board of Health, the Conservation Commission and the Needham Department of Public Works that the intent of this By-Law, as well as its specific criteria, are met. The Special Permit Granting Authority shall not grant a special permit under this section unless the petitioner's application materials include, in the Special Permit Granting Authority's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The Special Permit Granting Authority may impose such conditions, safeguards and limitations as it deems appropriate. The Special Permit Granting Authority shall document the basis for any departures from the recommendations of the other Needham boards or agencies in its decision.
- (b) **Review by Other Boards or Agencies** – Upon receipt of the special permit application, the Special Permit Granting Authority shall transmit one copy to the Board of Health, the Conservation Commission, and the Needham Department of Public Works for their written recommendations. Failure to respond in writing within 35 days of receipt by the

Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.

- (c) **Special Permit Approval Criteria** – The Special Permit Granting Authority may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 3.4.6 of this By-Law, and any regulations or guidelines adopted by the Special Permit Granting Authority. The proposed use must:
- (1) in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Aquifer Protection District, and
  - (2) be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- (d) **Rules and Regulations** – The Special Permit Granting Authority may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this By-Law, the Subdivision Regulations and Procedural Rules of the Planning Board and Chapter 40A and other provisions of the General Laws, and shall file a copy of said Rules and Regulations with the Town Clerk.
- (e) **Application Contents** – In addition to the requirements of Massachusetts General Laws, Chapter 40A, Section 9 and the Rules and Regulations of the Special Permit Granting Authority, the applicant shall file ten copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the Special Permit Granting Authority and shall be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
- (1) a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use:
  - (2) for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Fire Chief, Board of Health and Local Emergency Planning Committee. The plan shall include:
    - i provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
    - ii provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
    - iii evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30.00, including obtaining an EPA

Identification number from the Massachusetts Department of Environmental Protection.

- (3) proposed down-gradient location(s) for groundwater monitoring well(s), should the Special Permit Granting Authority deem the activity a potential groundwater threat.
- (f) **Technical Assistance** – To assist its review of applications for special permits, the Special Permit Granting Authority may engage a professional geologist, hydrologist, soil scientist, or Massachusetts registered professional engineer experienced in groundwater evaluation or hydro geology to review the application for completeness, accuracy and effectiveness of remediation and shall charge the applicant for the cost of such review. The Special Permit Granting Authority may retain a professional geologist, hydrologist, soil scientist, or Massachusetts registered professional engineer hereunder only for reviewing the applicant's projections of the impact of the proposed activity on the purposes of the district described in Section 3.4.1, verifying information contained in the application, and verifying the inclusion of the subject land within the Aquifer Protection District, whichever is proposed.
- (g) **Violations** – Written notice of any violations of this Section shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Building Inspector, the Board of Health, Conservation Commission, Needham Department of Public Works, and Water Division. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and/or operator of the premises.

For situations that require remedial action to prevent adverse impact to the water resources within the Aquifer Protection District, the Town of Needham, the Building Inspector, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Needham, the Building Inspector, the Board of Health, or any of their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be assessed to the owner and/or operator of the premises.

#### **3.4.8 Severability**

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.



### **3.5 Adult Uses Overlay Districts**

#### **3.5.1 Purpose and Intent**

It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that adult entertainment uses are distinguishable from other business uses and that the location of adult entertainment uses degrade the quality of life in the areas of the community where they are located, with impacts including increased levels of crime, blight, and late hours of operation resulting in noise and traffic late into the night. Therefore, this By-Law is enacted pursuant to M.G.L. Chapter 40A, Section 9 and Section 9A to serve the compelling Town interests by regulating and limiting the location of adult entertainment enterprises as defined herein. This regulation will promote the Town of Needham's great interest in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of life through effective land use planning.

#### **3.5.2 Establishment of Districts and Relationship to Underlying Districts**

The Adult Uses Overlay Districts are established as districts which overlay the underlying districts so that any parcel of land lying in an Adult Use Overlay District shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in this Zoning By-Law.

#### **3.5.3 Definitions**

The following terms shall be specifically applicable to the Adult Uses regulations and shall have the meanings provided below:

**Adult Bookstore** – an establishment having at least fifteen (15%) percent of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**Adult Video Store** – an establishment having at least fifteen (15%) percent of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**Adult Paraphernalia Store** – an establishment having at least fifteen (15%) percent of its stock devices, objects, tools, or toys which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**Adult Motion Picture Theater** – an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

**Adult Live Entertainment Establishment** – any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in M.G.L. Chapter 272, Section 31.

**Adult Use** – Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, and/or Adult Live Entertainment Establishment as herein defined.

### **3.5.4 Permitted Uses**

- (a) All uses permissible and as regulated within the underlying district.

### **3.5.5 Special Permit Uses**

The following uses are prohibited except upon the issuance of a Special Permit from the Board of Appeals: Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment. Such permit shall require specific improvements, amenities, and locations of proposed uses for which such permit may be granted.

### **3.5.6 Special Permit Standards for Adult Uses**

No Special Permit may be granted by the Board of Appeals for an Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment unless the following conditions and limitations are satisfied:

- (a) No Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment may be located less than 500 feet from a child-care facility, park, playground, recreational areas where large numbers of minors regularly travel or congregate, another Adult Use, or any establishment licensed under the provisions of M.G.L. Chapter 138, Section 12, or any establishment with a common victualler's license that allows consumption of alcoholic beverages on its premises, nor less than 700 feet from any residential district designated by this By-Law. The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the Adult Uses is to be located to the nearest property line of any of the designated uses set forth herein.
- (b) No merchandise or services prohibited as obscene or indecent under any federal or Massachusetts law or regulation or found to be obscene by any superior or higher federal or state court in any of the New England states shall be disseminated or available therein.
- (c) No signs, graphics, pictures, publications, videotapes, movies, covers, or other implements, items, or advertising that fall within the definition of Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment merchandise, or are erotic, prurient, or related to violence, sadism, or sexual exploitation shall be displayed in the windows of, or on the

building of any Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater, or Adult Live Entertainment Establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semi-public, outside such establishments, or from vehicles on Route 128 (Interstate 95).

- (d) All building openings, entries, and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- (e) Appearance of buildings for Adult Uses shall be consistent with the appearance of buildings in similar (but not specifically “adult”) use in Needham, not employing unusual color or building design which would attract attention to the premises.
- (f) No Special Permit for an Adult Use shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Sections 28, 29, 29A, 29B, and 35A. No Special Permit for an Adult Use shall be issued to any corporation, partnership, trust or any other legal entity if any of its directors, partners, trustees, principals, managers, employees or beneficial owners have been convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Sections 28, 29, 29A, 29B, and 35A. If any person who is a director, partner, trustee, principal, manager, employee or owns a beneficial interest in such legal entity is convicted of violating M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Sections 28, 29, 29A, 29B, and 35A, the Special Permit shall terminate herewith.
- (g) Special Permits granted for Adult Uses shall be subject to the provisions of Section 7.5.2 Special Permits of this By-Law.
- (h) The Adult Use shall comply with all dimensional and parking requirements set forth in Section 5.1 Off-Street Parking Requirements of this By-Law. In addition, no off-site parking as is allowed by right in Section 5.1.3 (m) and as is allowed by Special Permit in Section 3.2.1, shall be permitted.
- (i) If the Adult Use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, or screens. All such booth openings shall be clearly seen from the center of the establishment.
- (j) Special Permits granted for Adult Uses shall be subject to annual renewal.
- (k) Special Permits shall be granted for Adult Uses only upon determination of the Board of Appeals that the location and design of the facility are in harmony with its surroundings, and that adequate safeguards exist through licensing or other means to assure on a continuing basis that activities therein will not be patently contrary to prevailing standards of adults in the community and will not involve minors in any way.

- (l) A Special Permit issued under this Section shall terminate upon any one of the following occurrences:
  - (1) There is a change in the location of the adult use;
  - (2) There is a sale, transfer or assignment of the business or the license;
  - (3) There is any change in legal or beneficial ownership or management of the applicant;
  - (4) There is a violation of the Special Permit;
  - (5) If minors are to be involved.
- (m) Private duty police security detail shall be paid for by the Adult Use Business as deemed necessary by the Needham Chief of Police.

### **3.5.7 Lapse of Special Permit**

Any Special Permit granted under this section shall lapse within one year of the date of grant, not including the time required to pursue or await the termination of an appeal referred to in M.G.L. Chapter 40A, Section 17, if substantial use thereof has not sooner commenced except for good cause, or in the case of permit for construction, if construction has not begun within one year of the date of grant, except for good cause.

### **3.5.8 Severability**

If any section or portion of this By-Law is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the By-Law.

### **3.6 Medical Overlay District**

#### **3.6.1 Purpose of District**

The purpose of the Medical Overlay District is to promote the health, safety and general welfare of the community through guiding the development and use of health care and related activities, primarily serving those who work or live in Needham with quality health care while minimizing potential adverse impacts upon nearby residential and other premises. Those purposes are to be achieved through establishing controls specifically for medical-related uses at locations where either such uses already exist or they would be appropriate because of access and other locational considerations.

#### **3.6.2 Scope of Authority**

The Medical Overlay District is superimposed over rather than replacing underlying zoning districts. The regulations of this overlay district shall govern all new construction, reconstruction or expansion of new or existing buildings, and new or expanded uses, regardless of whether the use is medical-related or not, and regardless of whether the requirements of Section 3.6 are more or less restrictive than those of the comparable regulations for the underlying district at that location. Provisions of Section 3.6 shall supercede those of Section 3.2 Schedule of Use Regulations, Sections 4.2 through 4.7 (Dimensional Regulations), and Section 5.1.2 Required Parking. On all other matters, the provisions of the underlying districts shall continue to govern.

#### **3.6.3 Allowed Uses** The following uses are allowed by right:

1. Community Hospital
2. Medical Clinic
3. Medical Services Building
4. Any of the following, but only if ancillary to and contained within a common structure with a community hospital:
  - (a) Health Care Facility
  - (b) Medical Laboratory
  - (c) Pharmacy
5. All uses allowed by right in the underlying zoning district at that location.
6. Buildings and uses accessory to 1-5 above, such as parking garage, gift shop, cafeteria, and day care facilities.

#### **3.6.4 Special Permit Uses**

All uses permitted by special permit in the underlying district at that location may be allowed upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as that Authority may require.

### **3.6.5 Multiple Buildings and Uses**

Notwithstanding the provisions of Section 3.2 (Schedule of Use Regulations), in the Medical Overlay District more than one building and/or use on a lot is allowed as a matter of right, so long as each building and/or use is in compliance with the requirements of Section 3.6 of this By-Law.

### **3.6.6 Dimensional Regulations for the Medical Overlay District**

#### **3.6.6.1 Lot Area, Frontage and Setback Requirements**

The lot area and lot frontage requirements of the underlying districts shall govern development in the Medical Overlay District. The following setback requirements shall apply in place of those of the underlying district, including standing in place of provisions contained in Section 4.2.7 Reduction In Dimensional Regulations By Special Permit and in Section 4.4.8 of the Zoning By-Law imposing special limitations on premises located in business districts but abutting residential districts.

- (a) Front Setback: twenty (20) feet, except twenty-five (25) feet measured from any street having traveled way width exceeding thirty-five (35) as of October 8, 1998, and except thirty (30) feet from any street having a traveled way width less than thirty (30) feet as of October 8, 1998.
- (b) Side and rear setback: ten (10) feet, except twenty (20) feet where measured from a residential district boundary not contained within the Medical Overlay District, and except that no setback is required where a lot principally used for a community hospital, medical clinic, or medical services building abuts another of those uses.
- (c) Notwithstanding the above, parking structures containing four or more parking spaces shall be set back at least fifty (50) feet from any street having a travel way width of less than thirty (30) feet.

#### **3.6.6.2 Building Height Requirements**

Maximum building height shall be fifty-five (55) feet. However, portions of a building exceeding the building height allowed in the underlying zoning district shall be set back from any street having a right-of-way width of less than fifty (50) feet behind a forty-five (45) degree bulk control plane beginning at the required setback line and the building height allowed in the underlying zoning district, except where no setback is required by Section 3.6.6.1. Mechanical penthouses above the roof shall be excluded from height limitations provided that they occupy not more than 30% of roof area and are set back from the roof edge by a distance no less than their height.

### **3.6.6.3 Building Bulk and Lot Coverage**

Notwithstanding anything in the By-Law to the contrary, the maximum floor area ratio in the Medical Overlay District shall equal 1.0 exclusive of parking garages, interior portions of buildings devoted to off-street parking, and deck or rooftop parking. Uses in the Medical Overlay District shall not be subject to any other limitations on floor area ratio, lot coverage, or building bulk such as are contained in Sections 4.2.1, 4.4.2, and 4.4.7.

### **3.6.7 Required Number of Parking Spaces**

Notwithstanding anything in the By-Law to the contrary, in the Medical Overlay District the off-street parking requirements for hospitals, health care facilities, medical clinics, and medical services shall be the following:

- (a) The site contains only a Medical Services Building or Medical Clinic, then at least seven (7) parking spaces per 1,000 square feet of gross floor area shall be provided.
- (b) If the site contains only a Health Care Facility, then at least one (1) parking space for every two beds plus one parking space for each employee on the two largest shifts combined shall be provided.
- (c) If the site contains a Hospital or a combination of Hospital with a Medical Service Building, Medical Clinic, and/or Health Care Facility, then the required number of parking spaces shall be computed as follows:
  - (1) For facilities designated as short visit ambulatory medical, dental and related health services (out-patient facilities in which a physician, physician's assistant or nurse practitioner typically sees three (3) or more patients per hour); seven (7) parking spaces per 1,000 square feet gross floor area.
  - (2) For all other facilities, the required number of parking spaces equals the sum of the following (not including beds, employees, or floor area in the short visit ambulatory facilities included under (1) immediately above):
    - (i) One parking space for each two hospital beds, critical care/intensive care beds, and observation beds; plus
    - (ii) One parking space for each two full-time equivalent employees who are generally on-site during the largest shift, including both hospital employees and other hospital-affiliated employees; plus
    - (iii) Two and one-half (2.5) parking spaces per 1,000 square feet of gross floor area designated for longer visit ambulatory diagnostic, treatment and rehabilitation services such as radiology, rehabilitation services, emergency services, day surgery, medical day care and radiation oncology. Such services are characterized as requiring substantially more clinic time per visit than the services provided in the sort visit facilities designated under (1) above.

### **3.6.8 Site Plan Review Requirements**

For major projects in the Medical Overlay District, the Planning Board shall consider, in addition to all the factors listed in Section 7.4.6(b), the extent to which the traffic impact and driveway openings are consistent with the maintenance of the suburban, residential character of all predominantly residential streets and portions of streets nearby the premises (for example, such as School, Lincoln, Grant, Warren, Pleasant, and Kimball Streets relative to the BI-Deaconess site as of 1998); provided that a project proponent shall (i) compare the vehicle-trip volumes projected for those streets five years in the future with and without the proposed projects, and (ii) describe its efforts to manage traffic and locate and design driveway openings so as to minimize any increase in traffic on such streets.



### **3.7 Wireless Communications Facilities Towers Overlay District**

#### **3.7.1 Purpose of District**

The purpose of the Wireless Communications Facilities Towers Overlay District is to promote the health, safety and general welfare of the community while accommodating the communications needs of the general public. Those purposes are to be achieved by minimizing the adverse visual effect of wireless communication equipment towers, facilities and devices, by providing safeguards for the general public, by avoiding potential damage to adjacent properties, by maximizing the use of existing towers and buildings, by concealing new equipment within or on existing towers or buildings, and by encouraging co-location of equipment to accommodate the needs of wireless communication in order to reduce the number of towers needed to service the community.

#### **3.7.2 Scope of Authority**

The Wireless Communications Facilities Towers Overlay District shall be considered as overlying other use districts established by this By-Law. Within the Wireless Communications Facilities Towers Overlay District, the requirements of the underlying district continue to apply except as may be specifically superseded herein. The provisions of this section 3.7 shall not be applicable to towers presently in existence or to towers that may be constructed in the future that serve commercial television or radio communications purposes. The scope of authority of this section 3.7 shall be limited to personal wireless services and equipment related thereto as defined in section 6.7.2 of this By-Law.

#### **3.7.3 Uses in the Wireless Communications Facilities Towers Overlay District**

##### **3.7.3.1 Permitted Uses**

All uses permissible and as regulated within the underlying district. See Section 6.7 Wireless Communications Facilities.

##### **3.7.3.2 Special Permit Uses**

- (a) All uses permitted by special permit in the underlying district at that location may be allowed upon the issuance of a special permit by the Board of Appeals under such conditions as that Board may require.
- (b) Free-standing monopoles and free-standing lattice towers which meet the following criteria:
  - 1. Free-standing monopoles and free-standing lattice towers shall be no higher than 199 feet.

2. The minimum distance from the base of a free-standing monopole or a free-standing lattice tower to any property line shall be the height of the facility/mount, including any antennas or other appurtenances. In reviewing a special permit application for a wireless communications facility, the Board of Appeals may reduce the required setback distance for a free-standing monopole or a free-standing lattice tower to 125 feet from the property line, if it finds that a substantially better design will result from such reduction. In making such a finding, the Board of Appeals shall consider both the visual and safety impacts of the proposed use.
3. Monopoles are the preferred mount for such structures. The applicant for a wireless communication lattice tower shall demonstrate that such installation will reduce the number of standalone facilities needed for wireless communication facilities by enabling greater co-location of wireless communication equipment than would otherwise have been achievable on a monopole installation.
4. Co-location of wireless communication equipment on existing towers and buildings is encouraged. The applicant for a wireless communication monopole or lattice tower shall demonstrate that the communication equipment planned for the proposed structure cannot be accommodated on an existing or approved tower or structure or building within one-half mile search radius of a proposed monopole or lattice tower for one or more structural, technical, economic or other reasons as documented by a qualified engineer or other qualified professional including, but not limited to the following:
  - (a) no such tower or building exists.
  - (b) the structural capacity of the existing tower or structure is inadequate and cannot be modified at a reasonable cost, the proposed equipment will interfere with the usability of existing equipment.
  - (c) the owner of an appropriate building or structure has effectively denied permission to co-locate by unreasonable delay or commercially unreasonable terms or conditions.
  - (d) the height of an existing tower or structure is not adequate to permit the proposed equipment to function.

In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Board of Appeals. The Board of Appeals may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant, said fee should be reasonable, customary and actual. The Board of Appeals may deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

5. Every special permit issued by the Board of Appeals for a new monopole or lattice tower shall be automatically subject to the condition that the permit holder must allow co-location upon the structure by other wireless communication providers upon commercially reasonable terms and conditions and without unreasonable delay, if such co-location is technically feasible. It is expressly provided that any requirement imposed by a permit holder which requires the payment of rent in excess of industry standards or which allows co-location only if the requesting party provides comparable space on one of its structures to the permit holder shall be deemed to be commercially unreasonable.

#### **3.7.4 Establishment and Delineation of Wireless Communications Facilities Tower Overlay District**

For the purposes of this district, there are hereby established within the town certain wireless communications facilities towers overlay districts, consisting of areas which are delineated on a map entitled, "Zoning Map of the Town of Needham, Massachusetts": as originally dated September 1924 and revised to May 15, 1989, and as revised and amended to date and on file in the Office of the Town Clerk.

#### **3.7.5 Severability**

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

### **3.8 Needham Center Overlay District**

#### **3.8.1 Purposes of District**

The purposes of the Needham Center Overlay District are to encourage redevelopment of existing properties and infill development of an appropriate scale, density, mix of uses and design for a suburban downtown, substantially as set forth in the Needham Center Development Plan dated March 30, 2009, and to establish sub-districts in which to achieve these purposes in a manner compatible with surrounding areas; to create and sustain a vibrant, walkable downtown area; and to create opportunities for housing within walking distance of goods and services, public transportation, and the civic life of the town. Toward these ends, development in the Needham Center Overlay District shall be permitted to exceed the density and dimensional requirements that normally apply in the underlying zoning district(s) provided that such development complies with the design guidelines and all other requirements of this Section.

#### **3.8.2 Scope of Authority**

In the Needham Center Overlay District, all requirements of the underlying district shall remain in effect except where these regulations provide an alternative to such requirements, in which case these regulations shall supersede. In the event that a proponent wishes to develop in accordance with the regulations hereunder, the rules and regulations of the Needham Center Overlay District shall apply, and by filing an application for a Special Permit, site plan review or building permit under this Section 3.8, the owner shall be deemed to accept and agree to them. In such event, where the provisions of the Needham Center Overlay District are silent on a zoning regulation that applies in the underlying district, the requirements of the underlying district shall apply.

If the proponent elects to proceed under the zoning provisions of the underlying district, the zoning bylaws applicable in the underlying district shall control and the provision of the Needham Center Overlay District shall not apply.

#### **3.8.3 Use Regulations**

##### **3.8.3.1 Permitted Uses**

The following uses are permitted in the Needham Center Overlay District as a matter of right:

- (a) Uses exempt from local zoning control under M.G.L. c.40A, s. 3.
- (b) Public, semi-public and institutional uses permitted as of right in the underlying district.
- (c) Business uses permitted as of right in the underlying district.

- (d) Mixed-use building, not exceeding five dwelling units per building, with dwelling units allowed above the ground floor only.
- (e) Accessory uses permitted as of right in the underlying district.

### **3.8.3.2 Special Permit Uses**

The following uses are permitted in the Needham Center Overlay District only upon the issuance of a Special Permit by the Planning Board under such conditions as it may require:

- (a) Business uses allowed by special permit in the underlying district.
- (b) Mixed-use building containing six or more dwelling units, with dwelling units located on floors above the ground floor or on the ground floor, provided that:
  - (1) Entrances to ground-floor dwelling units are located on the side or rear of the building, not from any side facing the street, or the entrances may be from a first-floor lobby serving other uses in the building; and
  - (2) The ground floor of the front façade contains only retail or restaurant uses allowed as of right or by special permit.
- (c) Accessory uses permitted by special permit in the underlying district.

### **3.8.3.3 Multiple Buildings and Uses**

In the Needham Center Overlay District, more than one use may be located on a lot as a matter of right and/or more than one building may be located on a lot by special permit, provided that each building and/or its use(s) are in compliance with the requirements of Section 3.8 of this By-Law.

### **3.8.3.4 Enclosed Parking**

Enclosed parking in the Needham Center Overlay District shall conform to the requirements for the Center Business District in Section 4.4.6.

## **3.8.4 Dimensional Regulations**

### **3.8.4.1 Lot Area, Frontage and Setback Requirements**

The following lot area, frontage and setback requirements shall apply to development in the Needham Center Overlay District:

- (a) Minimum Lot Area: 10,000 square feet.

- (b) Minimum Lot Frontage: 80 feet.
- (c) Minimum Front Setback: 0 feet from the front property line.
- (d) Maximum Front Setback: The lesser of 3 feet from the front property line, or the average setback of existing buildings within 100 feet on the same side of the street as the proposed development. The Planning Board may grant a Special Permit to waive this requirement when the applicant proposes to provide a pedestrian plaza, outdoor cafeteria or similar amenity in front of a building facing Great Plain Avenue, Highland Avenue, Chestnut Street, or Chapel Street.
- (e) Minimum Side and Rear Setback: For lots abutting a residential district, fifty (50) feet; for all other lots, no minimum yard setback shall apply. Where side and rear yard setbacks of fifty (50) feet are required, no accessory uses shall be located within twenty-five (25) feet closest to the district boundary and all other requirements of Sections 4.4.8.3 and 4.4.8.5 shall apply. The remaining twenty-five (25) feet may be used for an accessory use, not including a building or structure. By special permit from the Planning Board, however, an underground parking structure may be permitted within the fifty (50) foot side and rear yard setbacks provided that the garage structure shall be located entirely below the grade of the existing lot and set back at least ten (10) feet from the district boundary or ten (10) feet from the lot line, whichever is greater, and the twenty-five (25) feet closest to the district boundary shall be suitably landscaped over the surface of the garage structure in accordance with Section 4.4.8.5.

#### **3.8.4.2 Building Height Requirements**

The maximum building height in the Needham Center Overlay District shall be as follows:

- (a) In Sub-District A: The minimum building height shall be two stories and twenty-seven feet and the maximum building height shall be two and one-half stories and thirty-five feet as of right. By Special Permit from the Planning Board, the maximum height of a building may be increased up to the following limits: three stories and thirty-seven (37) feet, or four stories and forty-eight (48) feet, provided that the fourth story is contained under a pitched roof or recessed from the face of the building, as shown in the Design Guidelines under Subsection 3.8.8 below.
- (b) In Sub-District B: The maximum building height shall be thirty-five (35) feet and two and one-half stories as of right, or by Special Permit from the Planning Board, thirty-seven (37) feet and three stories, provided that the third story is contained under a pitched roof or recessed from the face of the building, as shown in the Design Guidelines under Section 3.8.8 below.

Buildings developed under the regulations of the Needham Center Overlay District shall not be further subject to the maximum height regulations of the underlying district, as contained in Section 4.4.3.

### **3.8.4.3 Building Bulk and Other Requirements**

Except as provided in subsections (a) and (b) below, the maximum floor area ratio in the Needham Center Overlay District shall be the same standard that applies in the Center Business District under Section 4.4.2(b), except that the area of a building devoted to underground parking shall not be counted as floor area for purposes of determining the maximum floor area ratio. Buildings developed under the regulations of the Needham Center Overlay District shall not be subject to any other limitations on floor area ratio or building bulk in Section 4.4.2.

- (a) The Planning Board may grant a Special Permit to increase the maximum floor area ratio to 2.0 in Sub-Districts A and B, subject to the decision standards in Section 3.8.7.
- (b) The Planning Board may grant a Special Permit to increase the maximum floor area ratio to 3.0 in Sub-Districts A and B, subject to the decision standards in Section 3.8.7 and the following additional requirements:
  - (1) Off-street parking located on the site or provided through a shared agreement on another property within 1,000 feet of the site, in a form acceptable to the Planning Board, shall be required as a condition of special permit approval; and
  - (2) No waivers of minimum parking requirements or payment of fees in lieu of off-street parking spaces under Section 3.8.5 shall be allowed.

### **3.8.5 Off-Street Parking**

Except as provided below, the off-street parking regulations in Section 5.1 and the regulations for enclosed parking in the Central Business District in Section 4.4.6 shall apply in the Needham Center Overlay District.

- (a) The minimum number of off-street parking spaces in Section 5.1.2 shall apply except as follows:
  - (1) For retail stores or services, there shall be one space per 300 square feet of floor area, except that no parking spaces shall be required for a retail establishment with less than eight hundred (800) square feet of floor area.
  - (2) For any building in which more than forty (40) percent of the usable floor area is located above the ground floor, the minimum number of off-street parking spaces for upper-story business uses shall be eighty (80) percent of the number of spaces that would be required under Section 5.1.2, except that this reduction shall not apply to medical, dental and related health services or clinics.
  - (3) For dwelling units in a mixed-use building, the minimum number of off-street parking spaces shall be one and one-half spaces per dwelling unit except as provided in Section 3.8.6(h).

- (b) In addition to the requirement for bicycle racks under Section 5.1.3(n), for a mixed-use building, bicycle racks facilitating locking shall be provided to accommodate one bicycle for every two (2) dwelling units.
- (c) Except as provided in Section 3.8.4.3(b)(2) above, the Planning Board may grant a Special Permit to waive the requirements of Section 5.1.2 or Section 5.1.3, or the requirements of subsection (a) above, if a proposed development satisfies the conditions set forth in Section 5.1.1.6 and Section 3.8.5.1.

#### **3.8.5.1 Needham Center Off-Street Parking Fund**

- (a) A Special Permit may be granted to allow payment of a fee in lieu of the minimum number of off-street parking spaces required under this Section, if the Planning Board determines that:
  - (1) The applicant has reasonably demonstrated that it is uneconomic to accommodate all of the required parking spaces on the lot, given the area and shape of the lot, or under the building, given the size of the project;
  - (2) The applicant has reasonably demonstrated that it is infeasible to accommodate the required number of parking spaces through a combination of on-site parking and shared parking with an adjoining property; and
  - (3) The project has been designed to the extent feasible to reduce the required number of off-street parking spaces, e.g., by the inclusion of space for retail establishments with less than 800 sq. ft. of floor area, or a multi-story building with upper-story uses that qualify for reduced parking, as provided under Section 3.8.5(a).
- (b) The fee shall be computed on a per-space basis and paid into a special revenue fund known as the Needham Center Off-Street Parking Fund, to be used solely for the purpose of providing shared or public parking benefiting uses within the area covered by the Needham Center Development Plan.
- (c) The fee shall be determined by the Planning Board in accordance with the Needham Center Development Plan or the Town of Needham Capital Improvements Plan, as applicable, and paid by the applicant in two installments: one-half prior to the receipt of a building permit and one-half prior to receipt of a certificate of occupancy, unless the applicant chooses to pay the entire fee prior to receipt of a building permit.

#### **3.8.6 Affordable Housing**

Any mixed-use building with six or more dwelling units shall include affordable housing units as defined in Section 1.3 of this By-Law. The following requirements shall apply to a development that includes affordable units:



- (a) The floor area of the affordable units shall not be counted for purposes of determining the maximum floor area permitted under Section 3.8.4.3.
- (b) For a development with not more than ten dwelling units, at least one unit shall be an affordable unit; and for a development with eleven or more dwelling units, at least ten percent shall be affordable units. In the instance of a fraction, the fraction shall be rounded up to the nearest whole number.
- (c) If the applicant provides at least one-half of the affordable units for households with incomes at or below fifty (50) percent of area median income, the remaining affordable units may be sold or rented to households with incomes up to 100 percent of area median income even if the latter units are not eligible for the Subsidized Housing Inventory, regardless of any requirements to the contrary set forth in Section 1.3.
- (d) Affordable units shall be dispersed within the building and not concentrated in one area or on one floor. They shall generally be comparable in size and energy efficiency to the development's market-rate units.
- (e) The affordable units shall be constructed in proportion to the number of market-rate units in the development. Proportionality shall be determined by the number of building permits or certificates of occupancy issued for the affordable units and market-rate units, as applicable, or otherwise in accordance with a schedule set by the Planning Board in conditions imposed on the Special Permit.
- (f) The selection of eligible homebuyers or renters for the affordable units shall be in accordance with a marketing plan approved by the Needham Planning Board prior to the issuance of any building permits for the development.
- (g) The affordable units shall be subject to an affordable housing restriction as defined in Section 1.3 of this By-Law with limitations on use, occupancy, resale prices or rents, as applicable, and which provides for periodic monitoring for compliance with the requirements of said restriction.
- (h) For affordable units with not more than one bedroom, the minimum number of parking spaces under section 3.8.5 shall be reduced to one space per unit.

### **3.8.7 Site Plan Review**

For any project seeking a Special Permit under Sections 3.8.4.1, 3.8.4.2, or 3.8.4.3, or for any project proceeding under these overlay district provisions which also constitutes a Major Project under Section 7.4.2, the Planning Board shall consider, in addition to the factors set forth in Section 7.4.6, the following criteria:

- (a) The adequacy of existing facilities to serve the proposed development, including but not limited to water supply, sewer, natural gas and electric service;

- (b) The degree to which the proposed project, viewed in its entirety, will make a significant contribution to the urban design and economic development goals set forth in the Needham Center Development Plan;
- (c) The degree to which the proposed project is consistent with the purposes of the Needham Center Overlay District and conforms to the Design Guidelines in Section 3.8.8;
- (d) The degree to which the applicant's proposal has been designed to reduce or mitigate adverse impacts on adjacent properties or the surrounding area such as those resulting from excessive traffic congestion or excessive demand for parking;
- (e) For applications involving an increase in building height or bulk by special permit, the degree to which the applicant has reasonably demonstrated that the additional height or floor area is desirable for the redevelopment of the site, considering the site's location and physical characteristics and the condition of existing improvements;
- (f) The degree to which the proposed project incorporates as many green building standards as practical, given the type of building and proposed uses;
- (g) The degree to which the proposed project provides a significant public benefit through its inclusion of at least one of the following:
  - (1) Affordable housing units;
  - (2) Use of one or more renewable energy sources in the operation of the project;
  - (3) Off-street parking sufficient to accommodate the proposed uses, located on the site or provided through a shared parking arrangement acceptable to the Planning Board; or through payment of fees in lieu of off-street parking spaces except where such payment of fees is not allowed for a Special Permit under Section 3.8.4.3(b).

### **3.8.8 Design Guidelines**

The Design Guidelines for the Needham Center Overlay District shall be as adopted by the Planning Board and available on file in the Needham Planning Department.

### **3.9 Lower Chestnut Street Overlay District**

#### **3.9.1 Purposes of District**

The purposes of the Lower Chestnut Street Overlay District are to encourage redevelopment of existing properties in a manner that brings buildings close to the street, with landscaping and layouts and designs of sites and buildings conducive to pedestrian use; to reorganize and consolidate curb cuts through appropriate access management controls; and to create opportunities for Chestnut Street to serve as an attractive, safe, pedestrian-friendly street, substantially as set forth in the Needham Center Development Plan dated March 30, 2009. Toward these ends, development in the Lower Chestnut Street Overlay District shall be permitted to exceed the density and dimensional requirements that normally apply in the underlying zoning district(s) provided that such development complies with the design guidelines and all other requirements of this Section.

#### **3.9.2 Scope of Authority**

In the Lower Chestnut Street District, all requirements of the underlying district shall remain in effect except where these regulations provide an alternative to such requirements, in which case these regulations shall supersede. In the event that a proponent wishes to develop in accordance with the regulations hereunder, the rules and regulations of the Lower Chestnut Street Overlay District shall apply, and by filing an application for a Special Permit, site plan review or building permit under this Section 3.9, the owner shall be deemed to accept and agree to them. In such event, where the provisions of the Lower Chestnut Street Overlay District are silent on a zoning regulation that applies in the underlying district, the requirements of the underlying district shall apply.

If the proponent elects to proceed under the zoning provisions of the underlying district, the zoning bylaws applicable in the underlying district shall control and the provisions of the Lower Chestnut Street Overlay District shall not apply.

#### **3.9.3 Use Regulations**

##### **3.9.3.1 Permitted Uses**

The following uses are permitted in the Lower Chestnut Street Overlay District as a matter of right:

- (a) Uses exempt from local zoning control under M.G.L. c.40A, s. 3.
- (b) All uses permitted as of right in the underlying district.
- (c) Mixed-use building, not exceeding five dwelling units per building, with dwelling units allowed above the ground floor only.
- (d) Accessory uses permitted as of right in the underlying district.

### **3.9.3.2 Special Permit Uses**

The following uses are permitted in the Lower Chestnut Street Overlay District only upon the issuance of a Special Permit by the Planning Board under such conditions as it may require:

- (a) Business uses allowed by special permit in the underlying district, excluding an automobile service station.
- (b) Mixed-use building containing six or more dwelling units in a building, with dwelling units located on floors above the ground floor or on the ground floor, provided that:
  - (1) Entrances to ground-floor dwelling units are located on the side or rear of the building, not from any side facing the street, or the entrances may be from a first-floor lobby serving other uses in the building; and
  - (2) The ground floor of the front façade contains only retail, restaurant or office uses allowed by right or by special permit.
- (c) Mixed-use development, provided that at least sixty (60) percent of the front side of the lot facing Chestnut Street, measured in percentage of linear feet of frontage, shall be occupied by a building or buildings located within twenty (20) feet of the street line, said building(s) to contain permitted business uses and which may contain upper-story dwelling units. Free-standing multi-family dwelling(s) associated with a mixed-use development shall be located toward the rear of the site and be connected to building(s) facing the street by means of landscaped walkways or a courtyard.
- (d) Accessory uses permitted by special permit in the underlying district.

### **3.9.3.3. Multiple Buildings and Uses**

In the Lower Chestnut Street Overlay District, more than one use may be located on a lot as a matter of right and/or more than one building may be located on a lot by special permit, provided that each building and/or its use(s) are in compliance with the requirements of Section 3.9 of this By-Law.

### **3.9.3.4 Special Permit, Parking Garage**

The Planning Board may issue a Special Permit for a parking garage or parking structure for more than three (3) vehicles, including both enclosed and open structures, above and below ground, serving uses within the area covered by the Downtown Development Plan, where the parking garage or structure is located within 1,000 feet of the uses it serves, subject to such setback requirements as the Planning Board may impose.

### **3.9.4 Dimensional Regulations**

#### **3.9.4.1 Lot Area, Frontage and Setback Requirements**

The following lot area, frontage and setback requirements shall apply to development in the Lower Chestnut Street Overlay District:

- (a) Minimum Lot Area: 15,000 square feet.
- (b) Minimum Lot Frontage: 100 feet.
- (c) Minimum Front Setback: The lesser of 5 feet from the front property line or the average setback of abutting buildings within 100 feet on the same side of the street as the proposed development.
- (d) Maximum Front Setback: 15 feet from the front property line.
- (e) Minimum Side and Rear Setback:
  - (1) For lots abutting a residential district, fifty (50) feet from the lot line abutting the residential district; for all other lots, no minimum yard setback shall apply. Where side and rear yard setbacks of fifty (50) feet are required, the twenty-five (25) feet closest to the district boundary and all other requirements of Sections 4.4.8.2 and 4.4.8.5 shall apply. The remaining twenty-five (25) feet may be used for an accessory use, not including a building or structure. By special permit from the Planning Board, however, an underground parking structure may be permitted within the fifty (50) foot side and rear yard setbacks provided that the garage structure shall be located entirely below the grade of the existing lot and set back at least ten (10) feet from the district boundary or ten (10) feet from the lot line, whichever is greater, and the twenty-five (25) feet closest to the district boundary shall be suitably landscaped over the surface of the garage structure in accordance with Section 4.4.8.5.
  - (2) For lots adjacent to the MBTA right-of-way, there shall be a minimum yard setback of twenty-five (25) feet from the lot line abutting the MBTA right-of-way, and the first ten (10) feet of the setback shall be suitably landscaped and not used for any other purpose, including an accessory use, except that within said ten (10) feet the Planning Board may grant a special permit for surface parking, provided that the parking area is suitably landscaped. The remaining fifteen (15) feet may be used for an accessory use, not including a building or structure, except that within said fifteen (15) feet an underground parking structure is permitted if located entirely below the grade of the existing lot.

#### **3.9.4.2 Building Height Requirements**

The maximum building height in the Lower Chestnut Street Overlay District shall be two and one-half stories and thirty-five feet as of right. For lots having the required minimum frontage on Chestnut Street, the Planning Board may grant a Special Permit for a maximum building height

of three stories and thirty-seven feet or four stories and forty-eight (48) feet, provided that the fourth story is located under a pitched roof or recessed from the face of the building, as shown in the Design Guidelines under Section 3.9.8 below.

Buildings in the Lower Chestnut Street Overlay District shall not be further subject to the maximum height regulations of the underlying district, as contained in Section 4.4.3.

#### **3.9.4.3 Building Bulk and Other Requirements**

The maximum floor area ratio in the Lower Chestnut Street Overlay District shall be 0.70, except that for lots having the required minimum frontage on Chestnut Street, the Planning Board may grant a Special Permit to increase the maximum floor area ratio as provided in subsections (a) and (b) below. The area of a building devoted to underground parking shall not be counted as floor area for purposes of determining the maximum floor area ratio under this section. Uses in the Lower Chestnut Street Overlay District shall not be subject to any other limitations on floor area ratio or building bulk such as those contained in Section 4.4.2.

- (a) The Planning Board may grant a Special Permit to increase the maximum floor area ratio to 1.5, subject to the decision standards in Section 3.9.7.
- (b) The Planning Board may grant a Special Permit to increase the maximum floor area ratio to 2.0, subject to the decision standards in Section 3.9.7 and the following additional requirements:
  - (1) Off-street parking located on the site or provided through a shared agreement on another property within 1,000 feet of the site, in a form acceptable to the Planning Board, shall be required as a condition of special permit approval; and
  - (2) No waivers of minimum parking requirements or payment of fees in lieu of off-street parking spaces under Section 3.9.5 shall be allowed.

#### **3.9.5 Off-Street Parking**

Except as provided below, the off-street parking regulations in Section 5.1 shall apply in the Lower Chestnut Street Overlay District.

- (a) The minimum number of off-street parking spaces in Section 5.1.2 shall apply except as follows:
  - (1) For any building in which more than forty (40) percent of the usable floor area is located above the ground floor, the minimum number of off-street parking spaces for upper-story business uses shall be eighty (80) percent of the number of spaces that would be required under Section 5.1.2, except that this reduction shall not apply to medical, dental and related health services or clinics.

- (2) For dwelling units in a mixed-use building or mixed-use development, the minimum number of off-street parking spaces shall be one and one-half spaces per dwelling unit.
- (b) In addition to the requirement for bicycle racks under Section 5.1.3(n), for a mixed-use building or mixed-use development, bicycle racks facilitating locking shall be provided to accommodate one bicycle for every two (2) dwelling units.

#### **3.9.5.1 Needham Center Off-Street Parking Fund**

- (a) A Special Permit may be granted to allow payment of a fee in lieu of the minimum number of off-street parking spaces required under this Section, if the Planning Board determines that:
  - (1) The applicant has reasonably demonstrated that it is uneconomic to accommodate all of the required parking spaces on the lot, given the area and shape of the lot, or under the building, given the size of the project;
  - (2) The applicant has reasonably demonstrated that it is not feasible to accommodate the required number of parking spaces through a combination of on-site parking and shared parking with an adjoining property; and
  - (3) The project has been designed to the extent feasible to reduce the required number of off-street parking spaces, e.g., a multi-story building with upper-story uses that qualify for reduced parking, as provided under Section 3.9.5(a).
- (b) The fee shall be computed on a per-space basis and paid into a special revenue fund known as the Needham Center Off-Street Parking Fund, to be used solely for the purpose of providing shared or public parking benefiting uses within the area covered by the Downtown Needham Development Plan.
- (c) The fee shall be determined by the Planning Board in accordance with the Needham Center Development Plan or the Town of Needham Capital Improvements Plan, as applicable, and paid by the applicant in two installments: one-half prior to the receipt of a building permit and one-half prior to receipt of a certificate of occupancy, unless the applicant chooses to pay the entire fee prior to receipt of a building permit.

#### **3.9.6 Affordable Housing**

Mixed-use buildings or mixed-use developments with six or more dwelling units shall include affordable housing units as defined in Section 1.3 of this By-Law. The following requirements shall apply to a development that includes affordable units:

- (a) The floor area of the affordable units shall not be counted for purposes of determining the maximum floor area permitted under Section 3.9.4.3.
- (b) All other requirements of Section 3.8.6 shall apply.

### **3.9.7 Site Plan Review**

For any project seeking a Special Permit under Sections 3.9.4.1, 3.9.4.2 or 3.9.4.3, or for any project proceeding under these overlay district provisions which also constitutes a Major Project under Section 7.4.2, the Planning Board shall consider, in addition to the factors set forth in Section 7.4.6, the following review criteria:

- (a) The adequacy of existing facilities to serve the proposed development, including but not limited to water supply, sewer, natural gas and electric service;
- (b) The degree to which the proposed project, viewed in its entirety, will make a significant contribution to the urban design and economic development goals set forth in the Needham Center Development Plan;
- (c) The degree to which the proposed project is consistent with the purposes of the Lower Chestnut Street Overlay District and conforms to the Design Guidelines under Section 3.9.8;
- (d) The degree to which the applicant's proposal has been designed to reduce or mitigate adverse impacts on adjacent properties or the surrounding area such as those resulting from excessive traffic congestion or excessive demand for parking;
- (e) For applications involving an increase in building height or bulk by special permit, the degree to which the applicant has reasonably demonstrated that the additional height or floor area is desirable to redevelopment of the site, considering the site's location and physical characteristics and the condition of existing improvements;
- (f) The degree to which the proposed project incorporates as many green building standards as practical, given the type of building and proposed uses;
- (g) The degree to which the proposed project provides a significant public benefit through its inclusion of at least one of the following:
  - (1) Affordable housing units;
  - (2) Use of one or more renewable energy sources in the operation of the project;
  - (3) Off-street parking sufficient to accommodate the proposed uses, located on the site or provided through a shared parking arrangement acceptable to the Planning Board; or provided through payment of fees in lieu of off-street parking spaces except where such payment of fees is not allowed for a Special Permit under Section 3.9.4.3(b).

### **3.9.8 Design Guidelines**

The Design Guidelines for the Lower Chestnut Street Overlay District shall be as adopted by the Planning Board and available on file in the Needham Planning Department.



### **3.10 Garden Street Overlay District**

#### **3.10.1 Purposes of District**

The purposes of the Garden Street Overlay District are to encourage redevelopment and a modest intensification of use of existing properties in a manner compatible in scale and design with adjacent residential neighborhoods, with layouts and designs of sites and buildings conducive to pedestrian use, substantially as set forth in the Needham Center Development Plan dated March 30, 2009.

#### **3.10.2 Scope of Authority**

In the Garden Street Overlay District, all requirements of the underlying district shall remain in effect except where these regulations provide an alternative to such requirements, in which case these regulations shall supersede. In the event that a proponent wishes to develop in accordance with the regulations hereunder, the rules and regulations of the Garden Street Overlay District shall apply, and by filing an application for a Special Permit, site plan review or building permit under this Section 3.10, the owner shall be deemed to accept and agree to them. In such event, where the provisions of the Garden Street Overlay District are silent on a zoning regulation that applies in the underlying district, the requirements of the underlying district shall apply.

If the proponent elects to proceed under the zoning provisions of the underlying district, the zoning bylaws applicable in the underlying district shall control and the provisions of the Garden Street Overlay District shall not apply.

#### **3.10.3 Use Regulations**

##### **3.10.3.1 Permitted Uses**

Uses permitted as of right in the Lower Chestnut Street Overlay District shall also be permitted as of right in the Garden Street Overlay District, excluding retail establishments.

##### **3.10.3.2 Special Permit Uses**

The following uses may be allowed by Special Permit in Garden Street Overlay District:

- (a) Multi-family dwelling.
- (b) Mixed-use building that includes six or more dwelling units or any retail use allowed in the underlying district, subject to the requirements of Section 3.9.3.2(b).

### **3.10.3.3 Multiple Buildings and Uses**

In the Garden Street Overlay District, more than one use may be located on a lot as a matter of right and/or more than one building may be located on a lot by special permit, provided that each building and/or its use(s) are in compliance with the requirements of Section 3.10 of this By-Law.

### **3.10.4 Dimensional Regulations**

#### **3.10.4.1 Lot Area, Frontage and Setback Requirements**

The following lot area, frontage and setback requirements shall apply to development in the Garden Street Overlay District:

- (a) Minimum Lot Area: 15,000 square feet.
- (b) Minimum Lot Frontage: 80 feet.
- (c) Minimum Front Setback: The lesser of 10 feet from the front property line or the average setback of abutting buildings within 100 feet on the same side of the street as the proposed development.
- (d) Minimum Side and Rear Setback: 10 feet.

#### **3.10.4.2 Building Height Requirements**

The maximum building height in the Garden Street Overlay District shall be two and one-half stories and thirty-five (35) feet or, by Special Permit from the Planning Board, three stories and thirty-seven (37) feet, provided that the third story is contained under a pitched roof or recessed from the face of the building, as shown in the Design Guidelines in Section 3.10.8 below. Buildings in the Garden Street Overlay District shall not be further subject to the maximum height regulations of the underlying district as contained in Section 4.4.3.

#### **3.10.4.3 Building Bulk and Other Requirements**

The maximum floor area ratio in the Garden Street Overlay District shall be 0.70. By Special Permit from the Planning Board, the maximum floor area ratio may be increased to 1.20 for a mixed-use building(s) and to 1.0 for a multi-family dwelling(s). The area of a building devoted to underground parking shall not be counted as floor area for purposes of determining the maximum floor area ratio under this section. Uses in the Garden Street Overlay District shall not be subject to any other limitations on floor area ratio or building bulk such as those contained in Section 4.4.2.

### **3.10.5 Off-Street Parking**

The off-street parking regulations that apply in the Lower Chestnut Street Overlay District shall also apply in the Garden Street Overlay District.

### **3.10.6 Affordable Housing**

Any building or combination of buildings with six or more dwelling units on the lot shall include affordable housing units as defined in Section 1.3 of this By-Law. The following requirements shall apply to a development that includes affordable units:

- (a) The floor area of the affordable units shall not be counted for purposes of determining the maximum floor area permitted under Section 3.10.4.3.
- (b) All other requirements of Section 3.8.6 shall apply.

### **3.10.7 Site Plan Review**

For any project seeking a Special Permit under Section 3.10.4.2 or Section 3.10.4.3, or for any project proceeding under these overlay district provisions which also constitutes a Major Project under Section 7.4.2, the Planning Board shall consider, in addition to the factors set forth in Section 7.4.6, the following review criteria:

- (a) The adequacy of existing facilities to serve the proposed development, including but not limited to water supply, sewer, natural gas and electric service;
- (b) The degree to which the proposed project, viewed in its entirety, will make a significant contribution to the urban design and economic development goals set forth in the Needham Center Development Plan;
- (c) The degree to which the proposed project is consistent with the purposes of the Garden Street Overlay District and conforms to the Design Guidelines under Section 3.10.8;
- (d) The degree to which the applicant's proposal has been designed to reduce or mitigate adverse impacts on adjacent properties or the surrounding area such as those resulting from excessive traffic congestion or excessive demand for parking;
- (e) For applications involving an increase in building height or bulk by special permit, the degree to which the applicant has reasonably demonstrated that the additional height or floor area is desirable for redevelopment of the site, considering the site's location and physical characteristics and the condition of existing improvements;
- (f) The degree to which the proposed project incorporates as many green building standards as practical, given the type of building and proposed uses;

- (g) The degree to which the proposed project provides a significant public benefit through its inclusion of at least one of the following:
  - (1) Affordable housing units;
  - (2) Use of one or more renewable energy sources in the operation of the project;
  - (3) Off-street parking sufficient to accommodate the proposed uses, located on the site or provided through a shared parking arrangement acceptable to the Planning Board; or provided through payment of fees in lieu of off-street parking spaces.

#### **3.10.8 Design Guidelines**

The Design Guidelines for the Garden Street Overlay District shall be as adopted, and as may be amended from time to time, by the Planning Board and available on file in the Needham Planning Department.

### **3.11 Temporary Meteorological Towers Overlay District**

#### **3.11.1 Purposes of District**

The purpose of the Temporary Meteorological Towers Overlay District is to promote the health, safety and general welfare of the community while accommodating the needs of the general public. Those purposes can be achieved by minimizing the adverse visual effect of temporary wind monitoring or meteorological test towers (“MET towers”), by providing safeguards for the general public, by avoiding damage to adjacent properties, by minimizing the environmental impacts of such facilities, while at the same time accommodating the testing of wind speeds, direction, and quantity of wind power a particular location can be expected to generate by permitting temporary wind monitoring or meteorological test towers.

#### **3.11.2 Scope of Authority**

The Temporary Meteorological Towers Overlay District shall be considered overlying other use districts established by the By-Law. Within the Temporary Meteorological Towers Overlay District, the requirements of the underlying district continue to apply except as may be specifically superseded herein. The scope of authority of this Section 3.11 shall be limited to temporary MET towers as defined in the following provisions.

#### **3.11.3 Definitions**

**Meteorological or wind monitoring Towers (“MET Tower”)**: A temporary test tower equipped with mechanical devices to measure wind speeds, variability, and direction and used to determine how much wind power a site can be expected to generate. Such temporary towers are used to determine if a site can support a Wind Energy Facility by ascertaining the wind-to-electrical-energy conversion capability at a specific site.

**Wind Energy Facility**: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmissions, storage, collection and supply equipment, substations, transformers, site access, services roads and machinery associated with the use. A wind energy facility may consist of one or more wind turbines.

#### **3.11.4 Uses in Temporary Meteorological Towers Overlay District**

##### **3.11.4.1 Permitted Uses**

All uses permissible and as regulated within the underlying district.

### **3.11.4.2 Special Permit Uses**

- (a) All uses permitted by special permit in the underlying district at that location may be allowed upon the issuance of a special permit by the designated Special Permit Granting Authority under such conditions as the Board may require.
- (b) Free-standing MET towers which meet the following criteria:
  - 1. MET towers shall be exempt from the height and other dimensional regulations of the By-Law and shall follow the height and setback requirements set forth in this section.
  - 2. MET towers shall be no higher than 175 feet.
  - 3. The minimum distance from the base of any MET tower to any property line or public or private street or way shall be equal to the height of the MET tower.
  - 4. The minimum distance from the base of any MET tower to any dwelling, business or institutional use shall be equal to the height of the MET tower.
  - 5. The purpose of the setbacks is to provide an area free of habitable structures; such setback does not need to be cleared of trees and vegetation and to the extent possible, existing on-site trees and vegetation shall be preserved.
  - 6. Special Permit Criteria: All MET towers shall be constructed in locations to minimize any adverse visual, safety and environmental impacts. No special permit shall be issued unless the Board of Appeals, the Special Permit Granting Authority under this Section 3.11 finds that:
    - (a) the specific site is an appropriate location for such use;
    - (b) the use will not adversely affect the neighborhood;
    - (c) there will be no serious hazard to people or property from the use; no nuisance will be created by the use;
    - (d) adequate and appropriate facilities are provided for the proper operation of the use;
    - (e) the visual impact on the surrounding neighborhoods and community is minimized;
    - (f) no significant shadowing or flicking impacts the neighborhood;
    - (g) no significant negative impacts are occasioned by the use on the environment including rare species;
    - (h) the MET tower is painted with a non-reflective color that blends with the sky and/or other environmental considerations;
    - (i) all equipment is appropriately enclosed and/or shielded from view to avoid adverse visual impacts;
    - (j) the MET tower is lighted only if required by Federal Aviation Administration (FAA) or other state or federal requirements; and
    - (k) any lighting of the MET tower is shielded from abutting properties.
  - 7. All MET towers, related ground mounted electrical and control equipment shall be secured to prevent unauthorized access, and the MET tower shall be designed and installed so as not to provide readily accessible steps or ladders to the public for a minimum of eight (8) feet above the ground.
  - 8. All signs, other than manufacture or installers' identification, warning signs or owner identification on a MET tower or other structure visible from any public road shall be prohibited. All signs shall comply with the By-Law.

- (c) Prior to the issuance of a building permit (after a special permit is issued by the Board of Appeals), the applicant shall be required to provide evidence of liability insurance, in an amount to be determined by the Board of Appeals and made part of the special permit, to cover loss or damage to persons or property occasioned by damage or injury caused by the MET tower.
- (d) Proposed MET towers shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety and environmental and communications requirements. All MET tower facilities shall comply with the requirements set forth in this Section 3.11.
- (e) A Special Permit issued for any MET tower shall be valid for two (2) years unless sooner revoked. At the end of that time period, unless extended by the Board of Appeals for not more than a total of five (5) years upon a showing of good cause for same, the MET tower shall be removed by the applicant. The site shall be restored to its original condition following removal of the MET tower.
- (f) If the applicant fails to remove the MET tower in accordance with this section, the Town of Needham shall have authority, and any special permit issued hereunder shall so provide, to enter the subject property and remove the facility. The applicant may be required to provide a form of surety or bond at the time of issuance of the building permit to cover the costs of removal in the event the Town must remove the MET tower. The applicant shall submit a fully inclusive estimate of costs associated with removal and restoration of the site to its original condition, prepared by a qualified engineer. The amount of bond or surety shall be 150% of the cost at the time.

### **3.11.5 Submission Requirements**

Ten (10) collated sets of application materials shall be submitted with any application for a MET tower. Application materials shall include all plans and materials required in this section:

- (a) Documentation: Applications must include: name, address and telephone number of applicant and any co-applicants as well as any agents for same with original signatures; documentation of the legal right to install and use the proposed MET tower and proof of control over setback areas; proof of ability to obtain financial surety or bond; proof of liability insurance; certification of lighting requirements from the FAA; and certification of attainment from FCC relating to interference with radio or television reception (if required by the FCC).
- (b) Site Plan Requirements:
  - 1. A locus plan at a scale of one inch equals two-hundred feet which shows all property lines, the exact location of the proposed structure(s), public and private roads, street landscape features, dwellings and other structures within two-hundred feet of the property line. The zoning district designation shall be included on the plan.

2. A plan showing the proposed location of the MET tower and any other structures proposed, including fencing, utility connections, access roads, parking areas and any other construction attendant to the MET tower.
  3. A plan showing distances at grade from the MET tower to each building on the vicinity plan.
  4. A plan showing proposed changes to the existing property including grading and vegetation removal.
  5. A plan showing tree cover and average height of trees on the property and on adjacent properties within 200 feet of the property line.
  6. A landscape plan showing existing trees and shrubs, as well as those proposed to be added.
  7. Contours at each two feet Above Mean Sea Level for subject property and adjacent properties within 200 feet of the property line.
- (c) Elevation: Elevations shall be either at 1/4 or 1/8 inch scale showing views at grade from the north, south, east and west for a 50' radius around the proposed MET tower. Elevations shall show all equipment, security barriers, structures, existing and proposed trees and shrubs and grade changes.
- (d) Equipment Brochures: Equipment brochures for the proposed MET tower such as manufacturer's specifications or trade journal reprints shall be provided for the tower, mounts, equipment shelters, cables as well as cable runs and security barrier, if any. Such information shall include the type of materials proposed.
- (e) Photographs and Sight-line Diagrams: Color photographs of the current view shall be submitted from at least two locations to show existing conditions. Appearance of proposed MET tower shall be superimposed to scale on the existing condition photograph to accurately simulate the proposed MET tower. Sight-line diagrams from at least two locations shall be depicted in profile drawings at a scale of one inch equals forty feet. The diagrams shall show the lowest point of the MET tower visible from each location and all intervening trees and buildings.
- (f) Certifications: The following information must be prepared and signed by a registered professional engineer: description of the MET tower and reasons for the proposed location, height and design; confirmation that MET tower complies with all applicable Federal and State standards; and, if applicable, a written statement that the proposed MET tower complies with, or is exempt from, applicable regulations administered by the FAA, the FCC, Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health.

### **3.11.6 Severability**

A determination that any portion or provision of this overlay district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.



### **3.12 Elder Services Zoning District**

#### **3.12.1 Purposes of District**

The purpose of the Elder Services Zoning District is to promote the health, safety and general welfare of the community by encouraging the establishment of housing and other facilities in close proximity to each other primarily serving individuals 55 years or older who wish to live in independent apartments with convenient access to supportive services, while minimizing potential adverse impacts upon nearby residential and other properties. These purposes are to be achieved through establishing controls specifically for the proposed uses at locations where either such uses already exist or they would be appropriate because of access or other locational considerations.

#### **3.12.2 Scope of Authority**

The regulations of the Elder Services Zoning District shall govern all new construction, reconstruction or expansion of new or existing buildings, and new or expanded uses, regardless of whether the requirements of Section 3.12 are more or less restrictive than those of the General Residence Zoning District, of which the Elder Services Zoning District was formerly a part. Provisions of Section 3.12 shall supersede those of Section 3.2 Schedule of Use Regulations, Sections 4.2 through 4.10 (Dimensional Regulations) and Section 5.1.2 (Required Parking) except as otherwise specifically provided herein.

#### **3.12.3 Allowed Uses**

The following uses are allowed by right:

- a) All uses allowed by right in the General Residence Zoning District as described in Section 3.2.1 of the Zoning By-Law.

#### **3.12.4 Special Permit Uses**

The following uses are allowed by Special Permit:

- a) All uses allowed by Special Permit in the General Residence Zoning District, as set forth in Section 3.2.1 of the Zoning By-Law.
- b) Independent Living Apartments.
- c) Assisted Living and/or Alzheimer's/Memory Loss Facilities.

#### **3.12.5 Multiple Buildings and Uses in the Elder Services Zoning District**

More than one use may be located on a lot as a matter of right and more than one building may be located on a lot as a matter of right, provided that each building and/or its uses are in compliance with the requirements of Section 3.12 of this By-Law.

### **3.12.6 Dimensional Regulations For the Elder Services Zoning District**

#### **Lot Area, Frontage and Setback Requirements**

The following lot area, frontage and setback requirements shall apply to development in the Elder Services Zoning District:

- a) Minimum Lot Area: 10,000 square feet
- b) Minimum Lot Frontage: 80 feet
- c) Minimum Front Setback: 25 feet from the front property line
- d) Minimum Side and Rear Setback: Minimum side and rear setbacks abutting a railroad right of way shall be 10 feet. Minimum side and rear setbacks not abutting a railroad right of way shall be 25 feet except that the minimum setback abutting residential properties on the north side of Putnam Street shall be 35 feet. For side and rear setbacks not abutting a railroad right of way, the Board of Appeals or other Special Permit granting authority may grant a Special Permit reducing the minimum side yard setback to no less than 20 feet and the minimum rear yard setback to no less than 10 feet. In acting upon such applications for such reductions, the Board shall consider, in addition to the criteria for special permits generally (Section 7.5.2), the criteria set forth in Section 4.2.7 (a)-(f).

### **3.12.7 Building Height Requirements**

The maximum building height of buildings in the Elder Services Zoning District shall be 40 feet. The maximum number of stories (exclusive of the basement) shall be three, plus an unfinished, uninhabitable fourth story contained under a pitched roof with gables.

Provided further, however, that the existing nursing home structure shall be further limited so that any expansion of such structure in a northerly direction, the highest point of said structure along Gould Street, shall not be higher than a horizontal line drawn through the highest points of said existing nursing home structure and extended northward to the boundary of the Elder Services Zoning District. Such further limitation shall not be applicable to any future structures to be located to the west of said existing nursing home structure (as it may be extended) regardless of whether a physical connection will be constructed between such other future structures to the west and the existing nursing home structure (as it may be extended).

### **3.12.8 Building Bulk, Lot Coverage and Other Dimensional Requirements**

Except as otherwise provided herein, the maximum floor to area ratio in the Elder Services Zoning District shall be 1.0. Parking garages, interior portions of buildings devoted to off-street parking and all other parking facilities shall not be utilized in computing floor to area ratio.

Buildings developed or re-developed under the regulations of the Elder Services Zoning District shall not be subject to any other limitations on floor to area ratio, lot coverage, building bulk, setbacks or other dimensional requirements as are contained in Sections 4.2 through 4.10.

Notwithstanding anything in the By-Law to the contrary, including but not limited to the preceding two subparagraphs of this Section 3.12.8, the construction of single family detached dwellings, two family detached dwellings or the conversion of a single family dwelling to a two family dwelling, shall be governed by the dimensional and density requirements of the General Residence Zoning District.

### **3.12.9 Off-Street Parking**

Except as provided below, the off-street parking regulations in Section 5.1 shall apply in the Elder Services Zoning District.

- a) The minimum number of off-street parking spaces in Section 5.1.2 shall apply except as follows:
  - 1) The off-street parking requirement for independent living apartments in the Elder Services Zoning District shall be 0.5 parking spaces for each dwelling unit.

### **3.12.10 Affordable Housing**

Independent living apartments, as defined above (i.e. which excludes convalescent or nursing homes, assisted living and Alzheimer's/memory loss facilities) shall include Affordable Housing Units as defined in Section 1.3 of this By-Law. The following requirements shall apply to a development that includes Affordable Housing Units:

- a) For a development with not more than 10 dwelling units, at least one unit shall be an Affordable Housing Unit; and for a development with 11 or more dwelling units, at least 10% shall be Affordable Housing Units. In the instance of a fraction, the fraction shall be rounded up to the nearest whole number.
- b) If the Applicant provides at least one-half of the Affordable Housing Units for households with incomes at or below 50% of area median income, the remaining Affordable Housing Units may be sold or rented to households with incomes up to 100% of area median income even if the latter units are not eligible for the subsidized housing inventory, regardless of any requirements to the contrary set forth in Section 1.3.
- c) Affordable Housing Units shall be dispersed within the building or buildings and not concentrated in one area or one floor. They shall generally be comparable in size, energy efficiency, quality, convenience and unit specific real estate-related amenities to the development's market-rate units. Services and other amenities that may be purchased by residents on a voluntary basis are not to be considered unit specific real estate related amenities and are excluded from such comparability requirements.
- d) The Affordable Housing Units shall be constructed in proportion to the number of market-rate units in a development. Proportionality shall be determined by the number

of building permits or certificates of occupancy issued for the Affordable Housing Units and market-rate units, as applicable.

- e) The selection of eligible residents for the Affordable Housing Units shall be in accordance with a marketing plan approved by the Needham Planning Board prior to the issuance of any building permits for the independent living units.
- f) The Affordable Housing Units shall be subject to an affordable housing restriction as defined in Section 1.3 of this By-Law with limitations on use, occupancy, resale prices or rents, as applicable, and which provides for periodic monitoring for compliance with the requirements of said restriction.